

PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE

MARCH 8, 2007

A meeting of the Personnel/Administrative Affairs Committee was held on Thursday, March 8, 2007 at 7:00 p.m. in the Aldermanic Chamber.

Chair James R. Tollner presided.

Members of the Committee present: Alderman Robert A. Dion, Vice Chair
Alderman Daniel Richardson
Alderman David MacLaughlin
Alderman Greg Williams

Members Not in Attendance:

Also in Attendance: Alderman-at-Large Fred S. Teeboom
Alderman-at-Large David W. Deane

INTERVIEWS

Child Care Advisory Commission

Joanna Vallie (New Appointment)

Term to Expire: December 31, 2007

Chairman Tollner

If you could state your name and address for the record. Please let us know why you have interest in serving on the Child Care Advisory Commission.

Joanna Vallie, 25 Nottingham Drive

I am a registered nurse and have worked with women and children over the last 15 years. When this opportunity arose it just seemed like a natural progression to be able to advocate for women and their families in a different role.

Chairman Tollner

You are familiar with the amount of time that will be needed to participate on the commission and the work?

Joanna Vallie

Yes.

Alderman Richardson

I have a standard question I ask everybody, and that is have you been made aware of the code of conduct that is in the Nashua regulations?

Joanna Vallie

Yes I have.

Alderman Richardson

You indicated that you feel as though you know what the time commitment is for that. I don't have an appreciation – I don't really know what kind of a time commitment it really is. I was wondering could you let me know what you think it is?

Joanna Vallie

We meet once a month. It is the first Thursday of the month. Then there is one committee that they have asked me to be on that typically meets once a month as well. Then there is just because this is a new avenue for me there is going to be some reading that I am going to be needing to take on my own, but as far as meetings it is just a couple times a month. It is not a huge time commitment.

Alderman Richardson

Thank you.

Alderman Williams

I wanted to thank you for your willingness to serve. Thank you.

Chairman Tollner

Do you have any questions of us?

Joanna Vallie

No I don't.

Chairman Tollner

I also want to thank you for your willingness to serve. How this will work for you and anyone else that is going to be interviewed tonight, what we will do is we will go through all of the interviews, then as a committee we will vote on the interviewees, and then pass that recommendation along to the Full Board. Then the Full Board will vote on each one of you, which usually isn't a problem. You will be notified so you can come in and get sworn in. A lot of times it will be that night that the Board of Aldermen meets. After that you will be all set.

Joanna Vallie

Thank you very much.

Ethics Review Committee

Dr. Regina Shearer – **APPT WITHDRAWN**

Mine Falls Park Advisory Committee

Mark J. Soucy (New Appointment)

Term to Expire: December 31, 2008

Chairman Tollner

If you could take a second and let the committee know of your interest in serving on the committee.

Mark Soucy, 16 Seventh Street

I have been going to the committee meetings now for a year, and I have participated in all of the trail dates. It is something that I enjoy doing. I enjoy the park. I use it personally for exercise. I have a walking route that I have developed. It is something I try to, whether permitting, I get out there everyday. It is just one of those things that I like, and I would like to participate.

Chairman Tollner

You are familiar with the time commitment in serving on that committee since you have attended most of those meetings?

Mark Soucy

Yes.

Alderman Dion

Mr. Soucy I noticed your address, you are not too far away from Mine Falls.

Mark Soucy

Not at all.

Alderman Dion

You are very familiar with the park I assume. What do you think of it?

Mark Soucy

I like it. It is a lot cleaner than it was. Things seem to be improving in the park. The walking routes are good. I am not a runner anymore, but I do a lot of walking, and the walking routes are good. It is safe. People can get out there singly and not have to worry about things too much.

Alderman Dion

Do you have any ideas as to how to better the park?

Mark Soucy

Those come up at the meetings a lot with working on trails and trying to keep it clean. There are some improvements going on with the boathouse and things like that.

Alderman Richardson

Mr. Soucy I would like to ask you if you are informed of the code of conduct in the Nashua regulations.

Mark Soucy

Yes.

Alderman Richardson

I noticed your address. You are close to one of the entrances to the park. I used to go there quite a bit some 20 years ago to go fishing. That was actually a pretty good place. There have been times when it has been kind of filled in with a lot of growth. I don't know what the condition presently is. During the past couple of years I haven't had a lot of time on my hands. One of the things I wanted to ask you about was the growth in the water. There seems to be a lot of algae.

Mark Soucy

Milfoil.

Alderman Richardson

That is something that should probably be addressed.

Mark Soucy

Well it has been addressed and it ran into a snag. You would be able to get more complete information from the City Engineers. There was a program in place to try to eradicate it, but it ran into a snag.

Alderman Richardson

There used to be a lot of frogs in that pond – very large ones. I think Mine Falls Park is one of those assets that a municipality has that it is just irreplaceable. Over time you have to take a look at the long term – over a period of 50-100 years and what happens with that sort of asset. I worry about the parks being kind of nicked and dined – little chunks taken out for this and that. You lose the park over a period of 100 years. That is what really worries me. How do you feel about that?

Mary Soucy

Do you mean it being developed?

Alderman Richardson

Yeah like you know someone wants to put in a boathouse and someone else wants to put in a really nice outhouse or toilets like they did at Greeley Park, and maybe a 24-horseshoe pit.

Mark Soucy

I personally wouldn't want to see it happen. I don't know if I am overstepping. I am not a legislator. I don't want to see it happen. I would like to see it remain the way it is.

Alderman Richardson

You like it natural.

Mark Soucy

Yeah it is a nice asset to the city.

Alderman Richardson

Thank you.

Alderman MacLaughlin

Mr. Soucy I appreciate your willingness to serve and stepping forward as a candidate for membership on this committee. I have heard, and yet I have not verified, the word is that you have been involved with this committee even though you may not have held a formal seat on it. Is that true?

Mary Soucy

Right. I have been going to the meetings for a year this month, and I have gone to all of the trail dates for the past year.

Alderman MacLaughlin

I am sure my colleagues will join me in saying thank you for your input so far and your willingness to take your involvement to the next level. I would say that you and the other members of this advisory

are probably aware of the significant impacts of the money that Senator Gregg has secured for the maintenance and improvements made within the Mine Falls area over the last several years. I am aware of the past 4. I agree with your summation that there should be no infringement on the park. To your knowledge has there been any such infringement at any time in any area of the park?

Mark Soucy

Not that I am aware of.

Alderman MacLaughlin

Thank you.

Chairman Tollner

Do you have any questions of us?

Mark Soucy

No.

Chairman Tollner

First of all I would like to thank you for your willingness, and I should say thank you for participating in the meetings over the last year, and your willingness to serve on the committee. We will vote on your position tonight. Like I said you will be notified, and at the next Board of Aldermen meeting the Board will vote, and you can be sworn in.

Mark Soucy

Thank you for your time gentlemen.

Planning Board

Megan M. Prieto – **APPT WITHDRAWN**

George Torosian (Re-Appointment)

Term to Expire: March 31, 2009

Chairman Tollner

Good evening George. If you could state your name and address for the record. Being a re-appointment I guess the question for you is what is your interest in continuing to serve on the Planning Board.

George Torosian, 15 New Hampshire Avenue

As a lifelong resident of the City I think it is a good way to give back to the city. I have learned a lot during my first term on the board, and I look forward to another term.

Alderman MacLaughlin

Rather a statement of support – Mr. Torosian I have followed your actions on the Planning Board over the last four years, and I have found them to be commendable. You seem to be a deliberative, thoughtful, and insightful member of this commission. You are exactly what this commission needs especially in a time of change relative to the fact that you now have new leadership, and shortly new membership.

I think your return to the commission will be an asset, and I appreciate your approach to the hearings and your treatment of the public both in testimonial and also the way the meetings upstairs are held. You are always respectful of those who are assembled before you, and you seem to be very tolerant, patient and dedicated. I am very pleased to let you know that I fully support your re-appointment this evening.

George Torosian

Thank you.

Alderman Teeboom

Hello Mr. Torosian.

George Torosian

How are you Alderman?

Alderman Teeboom

How do we wind up with two lawsuits?

Chairman Tollner

Alderman Teeboom I want to stop you right here because Mr. Torosian is not allowed or shouldn't be commenting on either of the two pending lawsuits given the risk to the City at this time.

Alderman Teeboom

Sad state of affairs Mr. Torosian. That is all I have to say.

George Torosian

Noted.

Chairman Tollner

Are there any other questions?

Alderman Richardson

I guess I would like to just generally hear Mr. Torosian's feelings about his experience on the board as far as the difficulties of working in a situation where we have had vacancies, and I would like to ask him about the kind of time commitments that he thought were required versus the time commitments that were actually incurred given the vacancies that we have had in the past.

George Torosian

In terms of serving on the board I think the time commitment kind of varies. You can have an agenda with 2-3 cases where you are home by 9:00 p.m. and you can have an agenda where you are there until 1:00 – 2:00 a.m. The preparation for that work can be lengthy or very short.

Alderman Richardson

There is really nothing that I have thought about as far as controversial decisions that were made. Obviously the Wal-Mart thing was the Wal-Mart thing, and that is now – that decision has been made there, but in the future, I certainly hope that we don't have those kinds of things coming along. Those are tough decisions that have to be made. We certainly appreciate the people like yourself that are willing to step up and make themselves counted in dealing with the tough issues that the city faces. I certainly appreciate the commitment and the time. The only compensation that I can see that you can get out of it is certainly your own personal satisfaction, certainly getting to know the people in the city, and how the city actually operates. Also the satisfaction that you have been able to contribute to your community, and better the community to the best of your ability. I thank you very much.

George Torosian

Thank you.

Alderman Dion

Mr. Torosian I have watched you in action quite a few times on the Planning Board. I know that you are sensitive to the concerns of the neighborhood people and everything else that goes with it. I hope you continue doing that. I want you to know that at any time if there is anything the Board of Aldermen can do to help the Planning Board as far as legislation is concerned to clarify, amend or whatever you think is necessary to do we will be glad to do. We want to work together with you. There have been a lot of instances in the last 6-7 years that I have observed that I haven't been very happy with. I have made my feelings known quite a few times. Like I said if there is anything that we can do together to strengthen the NROs or whatever as far as planning I would be glad to work with you. Keep on listening to the people in the neighborhood and the character of the neighborhood.

George Torosian

Alderman you have my commitment on that.

Alderman Dion

I know I do.

Chairman Tollner

I would like to thank you for the time that you have dedicated to the Planning Board so far. I know there are a lot of times where that board struggles with what they would like in the neighborhood versus what is New Hampshire law. I think we have three new appointments coming behind you to the Planning and Zoning boards where they may want to vote one way, but when they become familiar with the regulations they have to give them their due consideration.

I want to thank you for your time. Do you have any questions of us before you leave?

George Torosian

I have no questions.

Chairman Tollner

Thank you. Like I said we will be voting on your appointment tonight, and then at the Full Board next week. Have a good night.

Cynthia Overby, Alternate (New Appointment) Term to Expire: March 31, 2010

Chairman Tollner

If you could state your name and address for the record. I know you are somewhat familiar with the Planning Board, but if you could take a second and let us know why you have interest in serving on the Planning Board.

Cynthia Overby, 520 Broad Street

I have seen a lot of development in Nashua that I have been pleased with and some I haven't. I am very interested in development and progress of Nashua.

Chairman Tollner

You are familiar with the amount of time that would be dedicated that you have to provide as a Planning Board member?

Cynthia Overby

Yes I am.

Chairman Tollner

As I mentioned a little earlier about the regulations – while I am sure you are not totally familiar with the regulations I know that we do have a plan in place for the new board members to meet with the

planning staff and become acclimated to the zoning regulations of the State.

Cynthia Overby

When I as first offered this position I took it very seriously and have made arrangements to attend a Planning Board workshop so that I can be more familiar and be an asset.

Alderman Dion

Cynthia you have watched a lot of the meetings of the Planning Board. You've attended the meetings and how do you feel about some of the decisions that have been rendered in the last 4-5 years? How long have you been watching these meetings or going to these meetings by the way?

Cynthia Overby

The past 4-5 years I would say.

Alderman Dion

And how do you feel about some of the decisions that were handed down?

Cynthia Overby

Some I have been pleased with and some I have not.

Alderman Dion

Whereabouts do you live now?

Cynthia Overby

Broad Street.

Alderman Dion

How did you feel about the Wal-Mart issue?

Cynthia Overby

I had my concerns about the development. I thought it was rather invasive for that particular site.

Alderman Dion

Are you sensitive to the concerns of the neighborhood people that are affected by some of these developments?

Cynthia Overby

Yes sir I am.

Alderman Dion

What is your assessment of – what is your philosophy as far as character of neighborhood?

Cynthia Overby

I believe the character of the neighborhood is a huge consideration when you are talking about development or re-development.

Alderman Dion

Like putting in condos in RA zones?

Cynthia Overby

Yes sir.

Alderman Dion

Well I am glad you feel that way. Good luck.

Alderman MacLaughlin

Thank you Mrs. Overby for stepping forward as a potential member of this very important board. My question is very simple – I enjoyed reading your resume. It is filled with some wonderful experiences. I could not help but note your interest and enthusiasm for all things environmental. Could you explain to the committee this evening what were the origins of your interest in the environment and especially relative to water equality?

You have a very impressive background volunteering to assist in the protection of some natural resources in our city.

Cynthia Overby

I would have to say that my involvement started at a very young age when I was going to oceanography taking courses there. It got me very involved in that. If I had stayed in Texas I might have been one of those insane people on Greenpeace. I came up here instead and turned into a land lover, and my interest changed to the conservation and the concern thereof.

Alderman MacLaughlin

I think that your viewpoint relative to the experience you have described on your resume is a breathe of fresh air, and I look forward to supporting you for the position. I think you will make a great addition in light of your perspective and the work. I am very familiar of your involvement in trying to point out the sensitivities of the site that was previously in question by Alderman Dion. I think it is in part due to

you and several of your citizen colleagues that helped the city realize that was a site that needed some very much warranted protection. Thank you for that, and thank you for your interest in serving.

Cynthia Overby

Thank you.

Alderman Teeboom

Wal-Mart site – how would you have voted?

Chairman Tollner

You can provide some general comments. I am not sure that you are quite familiar with all of the data that was presented or that would be presented as a Planning Board member. If you are comfortable answering that question you can. If you are not then you can just provide us with some general terms.

Cynthia Overby

I am guarded. I was quite involved in the Wal-Mart situation. I did a lot of research. I was into a lot of input, and when you are working at a development of that size you have to listen to every single input that is brought forward, and I believe that they rendered the correct decision.

Alderman Teeboom

Can you define what you mean – you have been following this for 5 years so this is not new to you. Give me your definition of quality of the neighborhood or area.

Cynthia Overby

Quality of the area if you are considering a neighborhood that someone has been living in for the past 50 years of their life, is a homeowner have gotten quite use to their surroundings and the way that their neighborhood runs and someone wants to come in and put in a development that is out of character, that is not what their neighborhood has been used to for the past 50 years – that would be something that I would probably be very questionable on.

Alderman Deane

I don't have any questions. I just have a comment. In the past, I have spoken with Ms. Overby on a number of different items and had a few e-mail exchanges with her. I think it is fairly evident by her responses tonight this is the type of person you want on the Planning Board. There is no doubt in my mind. She will be very thorough, and as she just stated a little earlier, she listens to all of the input before she makes her decisions. I just would hope that the political lobbying doesn't create any

danger in your decision-making process. Quite frankly I don't think it would. I think she is an excellent candidate, and I will be supporting her when I have an opportunity to vote on her nomination at the Full Board. Thank you.

Chairman Tollner

The political lobbying – if she was to get to the Planning Board you mean on projects?

Alderman Deane

Absolutely. Take your arm and put it behind your back – you know what I mean.

Chairman Tollner

Thank you.

Alderman Richardson

Thank you Mr. Chairman. I tend to like to ask questions that sort of clear the air on ethics as far as you are going to be part of a quazi judicial board making decisions that affect a lot of people's lives, their fortunes, reputations – those are the kinds of questions I tend to dwell on. They are very objective so those are the kinds of questions I would like to ask.

First I would like to ask have you become familiar with the Code of Conduct in the Nashua regulations?

Cynthia Overby

Yes I have.

Alderman Richardson

I also like to ask if you or your family have any indebtedness to any business that commonly appears before that board.

Cynthia Overby

No.

Alderman Richardson

Do you have any relatives by blood or marriage who are employed by the City of Nashua or serve on any board?

Cynthia Overby

No.

Alderman Richardson

Have you ever done business with the City of Nashua as far as selling goods or services?

Cynthia Overby

No.

Alderman Richardson

Have you read the ordinances considering the duties of your appointed board?

Cynthia Overby

Yes. As a matter of fact the Planning Board did give me something to review.

Alderman Richardson

I assume you then understand having been watching these proceedings you understand the commitments as far as time goes and the need for impartial decisions with respect to the law?

Cynthia Overby

Yes.

Alderman Richardson

Are you familiar with parliamentary procedure at all?

Cynthia Overby

Yes I am.

Alderman Richardson

So you feel comfortable with that?

Cynthia Overby

Yes I do.

Alderman Richardson

Do you feel comfortable in a role that requires you to observe rules of evidence and testimony and examination those types of things?

Cynthia Overby

Yes.

Alderman Richardson

If you are looking at a case and you are not thoroughly convinced one way or another as to the merits of the application, would you vote in favor of the applicant or would you vote in favor of saying no - if it was a really close call – or would you take another path? Would you look to hold it to get further information and clarify that?

Cynthia Overby

After hearing all the input that there was left to be heard, and I was not quite sure at that time when it came time to vote I would let it be known that I was not sure.

Alderman Richardson

If you are not sure of a legal point what would you do?

Cynthia Overby

I would always go to Legal, plus the planning department is sitting right in front of you.

Alderman Richardson

Thank you very much.

Cynthia Overby

Thank you.

Chairman Tollner

Are there any other questions? I know you are quite familiar with the ongoing; you have been here in this Chamber speaking on behalf of a number of issues. I think you will make the transition as a Planning Board member relatively easily. Do you have any questions of us?

Cynthia Overby

No.

Alderman Williams

I need to make it clear that I didn't participate in the discussions with the Planning Board applicants because I have a case pending before them. Next Tuesday night my employer has a case pending before the Zoning Board next Tuesday night so I am not going to participate in those either.

Zoning Board of Adjustment

Claire B. McHugh (New Appointment)

Term to Expire: September 11, 2007

Chairman Tollner

Good evening Claire. If you could state your name and address for the record, and then take a second and let the committee know why you have interest in serving on the Zoning Board of Adjustment.

Claire B. McHugh, 61 Dublin Avenue

The reason I am interested in the Zoning Board is because in particular I received a variance from the Zoning Board. I have always had an interest in the Zoning Board. I have I will say a servant's heart. If you notice my resume the first item here is work related, but actually was a volunteer position. I consider that I volunteered four years to serve my ward, Ward 1 as a State Representative, and under the personal I have at least four items also where I have just volunteered. This is an extension of giving back to my community and being involved in my community.

Chairman Tollner

I think you do have a sense of how often the Zoning Board meets and the time commitment not just at the meetings but the work that you will have to do outside the meeting in order to respond to those duties?

Claire B. McHugh

Yes.

Alderman Teeboom

You have a legal degree?

Claire B. McHugh

Yes.

Alderman Teeboom

That will be helpful.

Alderman Richardson

I will intend to ask the same questions that I asked of Ms. Overby. Have you ever done business with the City of Nashua by selling goods or services?

Claire B. McHugh

I have put together an afghan and donated one to the city and the city has bought 5 of them when they went to Japan, and gave them out as gifts.

Alderman Richardson

Thank you. Do you have any relatives by blood or marriage who are employed by the city or serve on any board?

Claire B. McHugh

Yes I have a first cousin Robert Dion.

Alderman Richardson

Thank you very much. Do you or your family have any indebtedness, personal favors or monetarily to any business that regularly appears before the board?

Claire B. McHugh

No.

Alderman Richardson

You are familiar with the NROs concerning the duties of your appointed board?

Claire B. McHugh

I have a copy that I got from the library, and I looked it over, but I am not sure that I have a whole lot of in depth knowledge. I haven't had a chance to read it all.

Alderman Richardson

Are you familiar with the NROs concerning the conduct regulations?

Claire B. McHugh

Yes I read them all.

Alderman Richardson

Are you familiar with the rules of parliamentary procedure?

Claire B. McHugh

Yes.

Alderman Richardson

Do you feel comfortable in a role that requires you to observe rules of evidence, testimony, and examination?

Claire B. McHugh

Do I have a problem with them?

Alderman Richardson

Do you feel comfortable with it?

Claire B. McHugh

Yes.

Alderman Richardson

Of course – if you are unsure of a legal point what would you do?

Claire B. McHugh

I would research it. I would make myself comfortable. I would approach it so that I know what the issues are legally and I would get to a decision feeling very comfortable.

Alderman Richardson

Would you confer with the city's attorney?

Claire B. McHugh

Definitely.

Alderman Richardson

Thank you.

Chairman Tollner

Are there any further questions? I guess whether you are on the Planning or the Zoning Board I guess the same criteria – you will become more familiar with the state laws and regulations as you proceed through these cases. You are comfortable deciphering and making decisions based upon state law as it adheres to those particular cases?

Claire B. McHugh

Yes.

Chairman Tollner

Do you have any questions of us?

Claire B. McHugh

Well Alderman Teeboom mentioned there was some training available, and I would like to know more about that should I be appointed.

Chairman Tollner

What I will do is I will contact Director Hersh, and I think what they will do is they will outreach to you and the other appointees if people are approved, and they will probably have a session or two and connect you with the Planning staff, and make sure they get you up to speed at least for your first or second meetings. Every meeting you will learn something new. There are people on the Zoning Board now that will tell you they have been on the Zoning Board for 2-3 years and a case comes before them that they haven't seen before. I think the biggest thing, as we mentioned before, is keep an open mind, do the research, get legal advice, there is no question that is an ignorant question because you want to make sure that you make a decision that is based on sound, legal, and in adherence to the laws because there will be some cases – there have been some cases where a board has voted against it, and when it has been appealed in the courts it has literally taken the court a morning to decide whether those opinions were made, and in the long run it ends up costing the applicant, the city, and a whole bunch of people a number of headaches.

I think we have done a good job over the last couple of years with new members coming on to introduce them to the state laws and regulations. We will make sure that happens for you.

Robert B. Carlson (New Appointment)

Term to Expire: September 11, 2008

Chairman Tollner

Good evening. If you could like the other individuals state your name and address for the record. If you could just take a second and let the committee know of your interest in serving on the Zoning Board of Adjustment.

Robert B. Carlson, 17 Cabot Drive

I am interested in serving on the Zoning Board of Adjustment – I want to get involved in the local community. I think there is a lot at stake and changes ongoing in Nashua. I think that everyone's voice needs to be heard on all issues, and as a person who makes his living by listening to others and researching what they have to say and then making decisions, I think I would be a fit based on my concerns for the community and my ability and skill set that I have developed in my career.

Chairman Tollner

You are familiar with how often they meet and the time that one needs to dedicate and commit?

Robert B. Carlson

Yes I am.

Chairman Tollner

Have you had an opportunity to attend or watch some of the meetings on television?

Robert B. Carlson

I have watched a couple of the meetings. I haven't attended. I do know that there is a substantial amount of time involved and also a lot of give and take amongst the members as part of the ongoing duties.

Chairman Tollner

As we mentioned previously there will be a training session from city staff to educate the new members on the rules, laws, and regulations. You are comfortable adhering to those rules, laws, and regulations?

Robert B. Carlson

Of course.

Alderman Teeboom

Good evening. You have been watching some of them on television, but not a lot so you have – you may or may not know the answer to my question. What is your definition of quality of the area?

Robert B. Carlson

I will give you an example. I am not a legal scholar or a big shot with a legal education. I guess the way I look at is you look at the community. I live on Cabot Drive. Most of the houses are ranches or garrisons. Would it disturb the quality of the neighborhood for someone to put a behemoth of a house there, three stories high, 7,000 square feet – it probably would. Under the zoning laws for the local area are they entitled to do it – they are, but the people who would be affected need to be heard and should have the opportunity to speak relative to any concerns or issues. If the community overall doesn't want the house to happen or the building or development to happen I think those matters need to be brought forward to the committee, to the public, and decisions need to be made on whether or not to allow something like that to go forward.

I think – I guess to answer the question more effectively when you go out in your neighborhood you have things you are used to. You have people you are used to. You have a way you like to live your life. Whenever there is change – if something comes in from the outside it is going to affect your life. I think people want to hear or want the opportunity to talk about things that they believe will affect their lives and affect the quality of their lives.

I guess I hope I have answered the question.

Alderman Teeboom

Well, obviously this is one legal scholars will be struggling with for quite a while. Definition of hardship – have you ever thought about that?

Robert B. Carlson

Yeah. As a matter of fact it is interesting you say that. In my role with my company in several situations we have been up against building codes in certain communities where we have not been allowed to move forward or we have been told we had to make changes to a façade. I won't go in and plead financial hardship because we are a well-capitalized company and we are fairly well off. If someone is going to get hurt by a decision that the Zoning Board makes and it will affect their livelihood to what degree or what affect will it hurt them – will it cause them to be out on the street, to lose their business? Will it cause their employees to be hurt? Then that is a hardship. Will someone lose a couple of thousand dollars or maybe lose some time on a job if they have to change a façade or move something back three feet – I wouldn't consider that a big hardship. I would consider that working with the community in which you live to make everyone happy with the development that you are putting together.

Alderman Teeboom

It may interest you to know that you will probably get into that when you get on the board. The definition of hardship has changed with the state. They had a 200-year definition of hardship – hard to overcome that hardship. It is a very tight hardship. In 2003 the law changed. The Supreme Court came out and said we are changing the rules. If you look at the case it says we have changed the rules after 200 years. What they did is make financial hardship one of the hardships. They created so much confusion – the court case was all clean and clear, and after they came out with that one they made it very confusing what is a financial hardship. There have been a ton of court cases since then and they fall each which way. The whole field had become very difficult now.

As you know Nashua is built out and developers are now finding tricks every trick in the book that you are probably aware of.

Robert B. Carlson

I have seen some things happen.

Alderman Teeboom

One of the tricks is the old flag lot trick. There was a famous case like the McCoy case – that was where a flag lot was allowed (driveways right next to each other) that was allowed by the Zoning Board. The Planning Board refused to put a building on that flag lot because it was just a ridiculous thing. That developer took us to court and they said hey the Zoning Board approved it; the Planning Board cannot not approve it. They also pointed out by the way that it was the Zoning Board not cooperating with the Planning Board and not meeting together that was a problem.

I have found out since that the Zoning and Planning Boards have never met. That is a problem. How do you feel about flag lots?

Robert B. Carlson

It is interesting you say that. I was reading the Telegraph the other day and there are also some things in the Union Leader about developers who put houses together on lots like that and have something connecting them like the breezeway. I have to tell you – you have to look at what is good for the community, what is good for the neighborhood, but if someone comes to you and presents a plan and says this is my program, and you say you have to do this, this, and this to be in compliance with the regulations of the city, and they skirt those regulations and laws then I think those issues need to be addressed and that builder or developer needs to be stopped or needs to make some changes relative to the agreements that they have had.

You know what when you are negotiating with someone, when you are talking with someone if you have an agreement with them and the agreement doesn't work out you go back to them and say listen this isn't working I need your help here. You don't just skirt the issue, you don't just do what you want to do, you try to work within the guidelines of your word. That is extremely important.

Alderman Teeboom

Well you have to work with the staff because when you sit on that board there is not a lot to work out. They have their attorneys and you sit there with staff and the staff is working out all the stuff. That is one of the reasons we have so many problems. You may have to take time off to get involved in that. Do you have the time to do that? You may have to come down in the daytime because nobody works at night.

Robert B. Carlson

It is interesting you say that. I don't travel anymore with my job, and this position I am in the office. I am in the office usually 1-2 days a week. I work out of my house. I do have an office in my home in Nashua. Usually I am there first thing in the morning and then getting out around 10:00 a.m. or so. I am willing to make the time, to take the time that is necessary to help my community, and to be involved. As anyone who has worked with me or knows me can attest, I am tireless, I stay at it, I keep doing the things that need to be done to get the job right. I am willing to take the time.

Alderman Dion

Mr. Carlson may I call you Bob?

Robert B. Carlson

Yes you may.

Alderman Dion

Tell me where Cabot Drive is. I am not familiar with that street.

Robert B. Carlson

You go up Concord Street to Kirkpatrick's corner. You take a left on Hillsferry, take a right on Birchwood, and it is straight down there. The back of my yard is the old Henry Burke Highway Exit 7, and behind it is Pennichuck.

Alderman Dion

How long have you been living in Nashua?

Robert B. Carlson

Ten or eleven years now.

Alderman Dion

All that time you have lived at the same address?

Robert B. Carlson

No. I lived on Perry Avenue down in the Tree Streets area for the first ...

Alderman Dion

I know where that is.

Robert B. Carlson

I lived at #5 Perry Ave.

Alderman Dion

One of those brick houses?

Robert B. Carlson

Yes I did.

Alderman Dion

You know how those houses came about?

Robert B. Carlson

They were mill supervisor's houses. In fact the gentleman I lived next to, Hank LaBiine, told me the history of the community the second day I moved there.

Alderman Dion

Have you attended any of the Zoning Board meetings?

Robert B. Carlson

I have not.

Alderman Dion

But you have watched them on television have you?

Robert B. Carlson

I have watched 1 or 2 meetings. I follow things in the paper quite a bit, but I have not attended the meetings.

Alderman Dion

You are aware that most people that go there want variances.

Robert B. Carlson

Yes.

Alderman Dion

And variances of course is something that you have the right to grant or not to grant. Alderman Teeboom touched upon hardship. I want to touch upon that and character of the neighborhood. What is your assessment of character of the neighborhood and hardship? Let me phrase it this way here – if a contractor or a person buys a house that has let's say 40 foot frontage with a garage, and it happened in my ward just recently, where the owner of the house went before the Zoning Board to get a variance stating that he will demolish his garage in order to give him a little more footage, but not enough, and asked for a variance to build another house on that lot. They granted it. What do you think of that?

Robert B. Carlson

Did anyone ask the neighbors what they felt?

Alderman Dion

Yes there were neighbors there.

Robert B. Carlson

What did the neighbors say?

Alderman Dion

They were against it.

Robert B. Carlson

Ho many neighbors were against it?

Alderman Dion

All of the abutters.

Robert B. Carlson

Well that would be a tough decision because even though it might be within the bounds of the bylaws of the community, the neighbors are – I think what you have to do - to the quality of the community, it is the quality of life. You have to look at what the neighbors and the people that are going to be affected by the building will think and say.

Alderman Dion

I believe that people on the Zoning and Planning Boards have got to do that. I feel as though they should listen to the people in the neighborhood, the people that show up in the rain, snowstorms, and then when they say they don't have a quorum send them home without an answer.

Robert B. Carlson

You can't do that. I had an interesting experience a number of years ago when I moved here where Pennichuck was going to do some spraying in the area directly behind my house. I came here four times. I ended up speaking before the Chamber. The first time we came the lawyers for Pennichuck got up and delayed things. The second time the same thing. The third time ... finally the fourth time it was a rainy night, it was late, and no one was around – myself and two other people were there. We spoke, and I think as you have spoken to what the attorneys had hoped would happen was people would go away and lose interest. It is in my personality and my nature to see things through. I look at it doggedly. If it needs to be done it has to be done. You have to allow people the opportunity to speak and can't let the meeting be swayed in the favor of individuals who don't live in the community and don't care about the community.

Alderman Dion

One thing Bob you want to realize is that we are in a built out situation here in the City of Nashua. People, contractors they will do anything to buy land, get variances, put up houses even when there is not enough footage involved – they ask for variances. As far as I am concerned the people on the Zoning Board have got to be strong enough to say no when it is affecting the neighborhood and the people that show up there are all against it, and not necessarily because everybody is there against it – if it is right it is right, but too many times I have watched these decisions being rendered and it bothered me something bad to see some of these decisions that have come down in the last 6-7 years.

You are going to be part of that maybe if we vote for you. I want you to realize that you have a very important job here. This is no picnic. I hope that you will listen to the people of the neighborhoods, the people that come up and express their opinions. Don't get fooled by the lawyers and developers and their consultants. That is my advice to you.

Robert B. Carlson

Thank you.

Alderman Richardson

Welcome Mr. Carlson. I would like to ask you a few questions basically identical to the ones that I have asked the other candidates for the Planning and Zoning Boards. Have you ever sold services or goods to the City of Nashua?

Robert B. Carlson

To the best of my knowledge directly no. I will tell you that the company that I work for and companies that I have worked for have bid on business in the State of New Hampshire regarding selling ice cream and ice cream novelties to various school systems and the universities. I have in the past worked with certain boards in the city to sample my ice cream products during the SummerFun at Greeley Park, and that has happened on several occasions. I am, however, I will be the first to tell you that if something came up I would recuse myself, and I wouldn't be making any phone calls internally to try to get things done based on my relationship. I think it would be done on the merits of the business proposal.

Alderman Richardson

Do you have any relatives by blood or marriage who are employed by the City of Nashua or serve on any boards?

Robert B. Carlson

I do not.

Alderman Richardson

Do you or your family have any indebtedness, personal favors, or owe money to any business or person that regularly appears before the board?

Robert B. Carlson

I do not.

Alderman Richardson

Do you or your family have any ties, relationships, intimate friendships, employment or whatever obligation to any businessperson or representative who regularly appears before the Zoning Board?

Robert B. Carlson

Not that I am aware of.

Alderman Richardson

Have you read the section of the NROs concerning the duties of the Zoning Board?

Robert B. Carlson

Yes.

Alderman Richardson

Are you familiar with the conduct regulations?

Robert B. Carlson

Yes I am.

Alderman Richardson

Are you familiar with rules of parliamentary procedure?

Robert B. Carlson

Yes I am.

Alderman Richardson

Do you feel comfortable in a role that requires you to observe rules of evidence, testimony, examination?

Robert B. Carlson

Yes.

Alderman Richardson

If you are not sure of a legal point what would you do?

Robert B. Carlson

I would ask for reconsideration or advice from legal counsel with the city.

Alderman Richardson

Thank you very much.

Chairman Tollner

Are there any other questions? I meant to ask the previous appointee – these are the first two new appointments by the President of the Board of Aldermen. How was your name forwarded to the President?

Robert B. Carlson

I believe Mr. Richardson.

Chairman Tollner

Claire you are still here.

Claire B. McHugh

Alderman Teeboom.

Chairman Tollner

Do you have any questions of us?

Robert B. Carlson

Is there a policy or a planning document that is available for the general public regarding the direction that the city strategically is going in for new development or expansion for growth? Is there a specific document ..

Chairman Tollner

That you could take a look at? Yes there is. The Planning staff will provide you with a copy of that.

Robert B. Carlson

That would be fantastic. Then in growing up in the Boston area I know that zoning varied community to community, and in some communities 2-3 different parts of the communities would have different zoning laws. Is there a zoning bylaw document based on each neighborhood in Nashua or is there one overall document for the city?

Chairman Tollner

There is one document, and in that document you have a map and the map will be broken out, this is R9, etc. There are different zones for residential. There is residential, commercial, industry, and retail for the most part.

Robert B. Carlson

Mixed use is there as well?

Chairman Tollner

Mixed use is also combined. It could be commercial/industrial, it could be retail/commercial, etc. An example would be exit 5 where they are building the condos. and they wanted to build the credit union. That is probably a good example where we had changed the zoning on that land a while back for the condos and now they want to flip it back – have a variance to switch it back.

Robert B. Carlson

The attorneys or the groups representing people who are affected by the decisions of the committee would prepare briefs or documents or would the city prepare counter briefs and documents?

Chairman Tollner

What happens is the applicant in most cases would have an attorney, in most cases, present their case. I would say most of the time the neighborhood usually would not have an attorney, but they will come and provide their opinion. If it is a group at times they have been known to hire an attorney. What the city does – at those meetings city staff will be there to provide council to the Planning Board and Zoning Board, and provide update information on regulations.

Robert B. Carlson

Is developmental notification – what I noticed in my neighborhood seemed to have been done by posting on various poles and signs and things like that and posted in the newspaper. Does anyone knock door to door or gather everyone together to ask their thoughts?

Chairman Tollner

No they don't. Some of the stuff is posted in the paper as you mentioned. For instance I think we got a copy of the Planning Board agenda, which is posted as well. ... **tape flipped** ... sometimes some plans or projects have started without the neighborhood necessarily knowing so now those are the black and green signs that you see posted around the city.

Alderman Deane

I think what Mr. Carlson will wind up getting is a copy of the Land Use Codes. What you will see through the Zoning Board process is a request to – when they are requesting a variance associated with the Land Use Code that is in place in the portion of the zone in which they are doing work – they want to work within violation of the existing codes, and then they come in and they give you their reasoning behind it, and you take it from there. The Land Use Codes were just recently updated after a two-year purging of them, and it is still a working document. We are going back and finding some areas that needed to be further addressed. That is ongoing through the form of ordinances. We are revising portions of it. As we speak we have some legislation in front of us pertaining to that, but you should be able to get a copy of that.

Staff will, when the cases come in, staff will identify the areas or land use codes that the variance is looking to work against. They are good with working with you. What I have seen in some of the people that are on that board – they take site visits. They will go out and look to see. There are a couple in particular that go out to every site. They get their packet, go to the site, look at the property, they look at the proposal through the variance process, the drawings that they have, they look at the neighborhood. There are a few of them that really do their homework on that. I think in the long run that has proved to be a prudent thing to do especially you can actually envision what the request is for.

Alderman Dion

Bob if you get confirmed by the Board I would recommend that you go see Carter Falk in the Community Development Department right here in City Hall. You can ask him for literature pertaining to Zoning, Land Use Codes, and he is usually the representative from Community Development at the Zoning Board meetings. He is usually sitting down with the committee.

Alderman Teeboom

I want to make a note that this code, this book this thick is not bedroom reading. It is very difficult to interpret. I noticed that it says term is September 11, 2007 for Ms. McHugh and 2008 for Mr. Carlson. Is that an error?

Chairman Tollner

That is correct. Thank you very much, and thank you for your willingness to serve.

Alderman Richardson

Mr. Chairman I was wondering if we could handle the voting on these in mass. I think we have an outstanding slate of individuals for all of these appointments. These individuals come from all walks of life. Clearly they have demonstrated objective behavior and intent. I believe that they have demonstrated a high ethical position. I would like to consider if we could just voting for the entire slate and save ourselves some time.

Chairman Tollner

They have quite extensive background, and if we do that then Alderman Williams will have to abstain from all of the appointments.

Alderman Williams

That is okay with me.

Chairman Tollner

I know that, but you are here and you have listened. What I will do I will move relatively quickly.

Alderman Deane

Your doing nothing more than making recommendations to the Full Board, so I mean ...

Chairman Tollner

I want to make them separate because they are totally different. In my whole time I don't think we have ever lumped a number of – are you talking about just for the Zoning Board or all of ...

Alderman Richardson

All of them.

Chairman Tollner

We have never done that before. I don't want to set up a precedent on that.

Alderman MacLaughlin

I would concur with the Chair's preference to handle each of these nominations separately both for the fact that we have different lengths of terms and we certainly have different areas of focus, and I think we would honor them for their volunteering even more so if we vote on them based on their own merits. That is my preference as well.

COMMUNICATIONS

**MOTION BY ALDERMAN MACLAUGHLIN THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE INTRODUCTION OF COMMUNICATIONS RECEIVED AFTER THE AGENDA WAS PREPARED
MOTION CARRIED**

From: Dr. Regina Shearer

Re: Withdrawal of Appointment to the Ethics Review Committee

**MOTION BY ALDERMAN MACLAUGHLIN TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

From: Megan M. Prieto

Re: Withdrawal of Appointment to the Planning Board

**MOTION BY ALDERMAN MACLAUGHLIN TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

From: Mark S. Cookson, Alderman – Ward 1

Re: Support for Mayoral and Board of Aldermen President Appointments

Chairman Tollner

Before I make a motion he said that he was not able to attend the meeting tonight. If he was able he would have in support of these candidates.

**MOTION BY ALDERMAN MACLAUGHLIN TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

From: Daniel L. Richardson, Alderman – Ward 3
Re: More Information Related to O-06-49 “Deleting Unenforceable Non-Public Meeting Provisions and Urge Boards to Invite Mayor and Aldermen to Participate”

**MOTION BY ALDERMAN RICHARDSON TO ACCEPT AND PLACE ON FILE
MOTION CARRIED**

APPLICATION TO LICENSE HAWKER'S, PEDDLER'S, ITINERANT VENDOR'S LICENSE - None

APPOINTMENTS BY THE MAYOR

Child Care Advisory Commission

Joanna Vallie (New Appointment)
25 Nottingham Drive
Nashua, NH 03062

Term to Expire: December 31, 2007

**MOTION BY ALDERMAN WILLIAMS TO RECOMMEND THE CONFIRMATION OF THE
APPOINTMENT OF JOANNA VALLIE TO THE CHILD CARE ADVISORY COMMISSION FOR A
TERM TO EXPIRE DECEMBER 31, 2007
MOTION CARRIED**

Ethics Review Committee

Dr. Regina Shearer- **APPT WITHDRAWN**

Mine Falls Park Advisory Committee

Mark J. Soucy (New Appointment)
16 Seventh Street
Nashua, NH 03060

Term to Expire: December 31, 2008

**MOTION BY ALDERMAN MACLAUGHLIN TO RECOMMEND THE CONFIRMATION OF THE
APPOINTMENT OF MARK J. SOUCY TO THE MINE FALLS PARK ADVISORY COMMITTEE FOR
A TERM TO EXPIRE DECEMBER 31, 2008
MOTION CARRIED**

Planning Board

Megan M. Prieto – **APPT WITHDRAWN**

George Torosian (Re-Appointment)
15 New Hampshire Avenue
Nashua, NH 03063

Term to Expire: March 31, 2009

Cynthia Overby, Alternate (New Appointment)
520 Broad Street
Nashua, NH 03063

Term to Expire: March 31, 2010

MOTION BY ALDERMAN TOLLNER TO RECOMMEND THE CONFIRMATION OF THE FOLLOWING INDIVIDUALS TO THE PLANNING BOARD: GEORGE TOROSIAN FOR A TERM TO EXPIRE MARCH 31, 2009 AND ALTERNATE CYNTHIA OVERBY FOR A TERM TO EXPIRE MARCH 31, 2010

MOTION CARRIED

Alderman Williams Abstained

APPOINTMENTS BY THE PRESIDENT OF THE BOARD OF ALDERMEN

Zoning Board of Adjustment

Claire B. McHugh (New Appointment)
61 Dublin Avenue
Nashua, NH 03063

Term to Expire: September 11, 2007

Robert B. Carlson (New Appointment)
17 Cabot Drive
Nashua, NH 03064

Term to Expire: September 11, 2008

MOTION BY ALDERMAN DION TO RECOMMEND THE CONFIRMATION OF THE FOLLOWING INDIVIDUALS TO THE ZONING BOARD OF ADJUSTMENT: CLAIRE B. MCHUGH FOR A TERM TO EXPIRE SEPTEMBER 11, 2007 AND ROBERT B. CARLSON FOR A TERM TO EXPIRE SEPTEMBER 11, 2008

ON THE QUESTION

Alderman Teeboom

We should note that these are the first appointments under our new ordinance that permit the President of the Board to make appointments. I remember hearing that they couldn't find candidates before, which was the excuse for not having – for them having so many vacancies. I think here we have two outstanding candidates, and they came in pretty soon after that ordinance got passed. I must commend President Rootovich for moving decisively.

MOTION CARRIED

Alderman Williams Abstained

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS – None

NEW BUSINESS – ORDINANCES

O-07-85

Endorser: Alderman-at-Large Fred S. Teeboom

**PROVIDING FOR SEALED COMPETITIVE BIDS FOR BRAND NAME PRODUCTS OR
PRODUCTS PRODUCED BY A SINGLE MANUFACTURER**

MOTION BY ALDERMAN WILLIAMS TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Alderman Teeboom

Mr. Chairman at the request of the Purchasing Manager, there is an amendment to the ordinance. I have copies. If someone could make the motion on the committee – what it does it ...

**MOTION BY ALDERMAN TOLLNER TO AMEND O-07-85 IN THE TITLE AND BODY BY
REPLACING THE “\$15,000” WITH “\$10,000” IN EACH INSTANCE IT OCCURS**

ON THE QUESTION

Alderman Teeboom

The Purchasing Manager wanted to make sure that the \$15,000 was changed to \$10,000, which was voted on and agreed upon some time ago, but had never been corrected in the code. She wanted to make sure that the limit by which contracts have to come before the Finance Committee is \$10,000 not \$15,000. If you can see that appears in paragraph 242 and in paragraphs 2-243 and in the title.

Alderman Richardson

The text of paragraph M, which is apparently being added, is that the same as it was previously in the ...

Alderman Teeboom

No no. As I understand the Chairman he only wants to talk about the amendments to the – then I will address M.

Alderman Richardson

I am trying to understand if M has been changed, which is part of an amendment.

Alderman Teeboom

M is new – added.

Alderman Richardson

M was new in the prior version?

Alderman Teeboom

Yes. M is unchanged.

Alderman Richardson

M is unchanged. Thank you very much.

Chairman Tollner

Basically what we are doing is we are just talking about the amendment of moving it from \$15,000 to \$10,000. That is it. Is there any discussion on that amendment?

MOTION CARRIED

Alderman Teeboom

Let me address the subsequent motion. It is quite an important motion frankly. In the Finance Committee meeting, a number of meetings ago the police department came forward with 6 bids for police cruisers, which were a Ford product, and one was a Chevy. Then they came up with the list of specifications, and it was very unclear why they had eliminated the Chevy. It was very clear they did not want a Chevy. In my opinion, and they kind of admitted it in e-mails – what they do is they try to fix it so a preferred manufacturer's product or preferred product that they have good experience with, that they like, that that is what they want.

I had a problem with it at the time because if the code says there has got to be competition they ought to have competition. The item rejected was a Chevy lower price, better warrantee. Some of the specifications were questionable in my opinion – why they were rejecting the Chevy as opposed to the Ford. But, the Finance Committee passed it. There was competition with the Fords. There were 6 bidders and they picked the lowest of the 6 Ford prices.

I discussed this further and spoke with legal counsel and said if the Police Department wants to pick Fords why have them go to contortions trying to prove that the Ford is the only product that can meet the specifications? Let them bid a Ford, but let them make sure that the Ford itself can be competed. Come to think about it, it is not just police cruisers it applies to any number of products. We on this Board approved audio equipment. It said in the RFP Sony or equivalent as an example – Sony making excellent DVR. What was really required was a Sony – they didn't want another product except a Sony. We said okay if you want to buy a product, and you like the brand name of that product, it is the best you think you can get, and you can get competition with a product why not ask for this product? Why go through an artificial contortion specification and target just a product? It make the job very simple. The Police Department could come in and say Ford X can bid – no specifications required just name some brand name, and make sure on the sealed bid because everybody knows what a Ford product is – if you want to add some stuff extra, special equipment they may have, make the specification specify that. You don't have to say gross vehicle weight, 6 cylinders, 16" rim wheels – you don't have to say any of that. It makes the job easy.

If someone bids a job knows if I am not a Ford there is no sense for me putting a bid together. If it is a Sony, and you have ten companies that can bid a Sony because it is a grand product that is widely manufactured and widely bid, Sony can bid.

Chairman Tollner

What you are saying really is the Purchasing Manager would be required to submit a written statement providing the reasoning?

Alderman Teeboom

Well they always have to do that. It is not so much to us as to the bidder. It is to the bid process. It makes the bid process simple and gives our departments the option to buy what they want to buy without going through a lot of contortion, and all we ask for sealed bids is that there is competition so we get the best price for that product.

Chairman Tollner

The amendment that was previously made with your legislation, the Purchasing Manager is comfortable with it?

Alderman Teeboom

There are going to be a number of ordinances coming up, all of which deal with the Purchasing, all of which have been sent to the Purchasing Manager – in fact she is very comfortable with this because it gets her out of difficulty – she doesn't have to sit and gather specifications as an example. All she has to do is make sure the product is defined, whatever else has to be added to the standard product is defined, and that there is competition.

Alderman Williams

I watched this meeting, this Finance Committee meeting you had, and I think this is probably right up there in your top 5 pieces of legislation. This is good. This is very good. I watched the meeting. It was ridiculous. I actually read the bid submitted by the Chevy dealer, and there were things like 16" or 17" wheels and the Chevy only had the opposite size. I listened to the back and forth, and it was clear that the reasoning for the Ford wasn't because they necessarily preferred it, but because the cages and a lot of the equipment that we mount on it fits specifically to the Ford, which makes a lot of sense. That is one of the reasons.

This piece of legislation actually enables the Police Department to get what they want to get and other purchases like you said. This is great stuff. I am glad to hear that the Purchasing Manager likes it as well.

Alderman Teeboom

Well the Legal Counsel, the important part that I worry about is making sure that our legal staff concurs with all of this.

Alderman Deane

Thank you. I was on the contortion side of the e-mails that went out after that Finance meeting from a certain somebody. I met with the Police Department, and I tried to look at their standpoint on the products that they needed for their maintenance and operations. We pay an individual over there to log and maintain all the data associated with the vehicle use, the ups and downs, the breakdowns, the issues they have, the components they have to purchase, and things of that nature, and he does a very good job at it. I think the bone of contention was that when the product was put out for bid obviously the specification sheets couldn't be met by other manufacturers.

The good thing about it was that we got a number of bids from a number of different dealers that provided Ford products, and they were substantially different. I feel like Alderman Williams does, if you have a – it is not really a sole source bid, it is a sole product that you are looking for, but you have a number of different outlets in which to receive bids from. If the professionals that we have on staff are recommending this, and it works best for their division or department then we should be following their recommendations. This will work well. It will get rid of a lot of the heartburn that Mrs. Tremblay has and a lot of the paperwork that they have to deal with. The other thing she is doing now is purging her vendor list as well. That will stop a lot. This will give a little leeway and opportunity for those that are out looking for certain manufactured products.

Chairman Tollner

Is there any further discussion?

MOTION CARRIED

O-07-86

Endorsers: Mayor Bernard A. Streeter
Alderman-at-Large Fred S. Teeboom

**ADDING AN EMERGENCY MANAGEMENT REPRESENTATIVE TO THE CABLE
TELEVISION ADVISORY BOARD (CTAB)**

MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Alderman Deane

I just had a question of the sponsor – how many does that put in total on the committee?

Chairman Tollner

Fifteen.

Alderman Deane

Thank you.

Alderman Tollner

Since Chief Hatfield left – he was the EMS representative, and he was also a member of CTAB. Now as we are proceeding to design the system, and you will hear more about it in the month to come, the

important part of the system is EMS, Emergency Management, so emergency management can be broadcast over three channels. When Hatfield left he said be aware that when I leave Chief Morrissey does not have my credentials for emergency management. He said you should have a separate emergency management representative on the board. Kelly Dowling, our Clerk and the Mayor's Assistant, spoke to the Mayor, and the Mayor said I would like to appoint that member.

I approached Chief Morrissey also and he said once I get organized I would like to appoint my guy. I went to the Mayor and the Mayor said no I am going to appoint a guy. I said hey not a problem. This says the Mayor shall appoint the member. If we do this it will be the 15th member, having an even membership is never quite good. I don't know who the Mayor will appoint, but I think having an emergency management representative as we do the design and it is a specialty area, I think it is important.

Chairman Tollner

Is there any further discussion?

MOTION CARRIED

O-07-87

Endorser: Alderman-at-Large Fred S. Teeboom

REQUIRING WRITTEN SOLICITATION AND RESPONSE FOR PROFESSIONAL SERVICES BE SUBMITTED TO THE FINANCE COMMITTEE

MOTION BY ALDERMAN WILLIAMS TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Alderman Teeboom

I am the sponsor of this ordinance. This ordinance has come about from my concern and hopefully others about how professional services have been bid. Here is an example – the Finance Committee in comes a bid for the service of an attorney – doesn't say what he is making, his hourly rate, for how long, doesn't say what services he will provide, just says approve these services. That really upset me. What really upset me was what happened yesterday. This was written before yesterday. Yesterday the Fire Department walks in and the Chief comes in with a contractor and the contractor said I am going to do drawings (this is about Conant Rd. station) said I am going to do drawings, provide construction services, and I am going to do a feasibility study, and I want \$32,000 – he broke it down into three parts.

The question was what is it you are going to do. That was not stated anywhere just like with the attorney's bid. When we see professional services, what this ordinance says, when the Finance Committee gets a recommendation to approve a contract that ought to identify the services, identify what the services are that you are going to provide, identify what you are going to charge, make it a not to exceed – that is we know where you are going to go, if you are going to extend it because professional services you never know quite what you are going to spend, come back and let the Finance Committee give you an amendment, but don't keep it open-ended. So we know what we are getting before we approve it.

I have gone through a number of these professional services – I have started asking questions of the

Purchasing Manager – we got insufficient answers – sometimes we got answers and sometimes not. Yesterday we got answers that just didn't make any sense. Luckily the Finance Committee voted to hold and not approve the \$32,000. Hopefully we will get better clarification.

This will stop that practice. I will tell you the Purchasing Manager yesterday kept referring to this as if it had passed. I don't know if you remember that. She said an ordinance that is on the books – this is the ordinance she referred to. This will help her as well. It went past Legal. The fact that we don't have this on the books is astounding to me.

Alderman Deane

This is a good ordinance. This is long overdue. It will thoroughly lay out the entire process of what we are paying for. As Alderman Teeboom just finished stating, we get things at the Finance Committee level that are just so open-ended, so undisclosed to what the scope is, and it needs to be better defined so that we have a clear understanding of what we are purchasing, what services we are getting, and what the total cost it. Last night as Alderman Teeboom stated was a perfect example of a request for \$32,000 to be expended on nothing that was clearly defined. When you do that and look at that type of project, and we are told there is a \$400,000 budget, and you have to understand whether they are going to go to the meat of the problem or start with the amenities and say well we will do the roof next year or we will do the windows the year after – we want to understand what we are getting for the dollars that we are spending. Last night as I just said was a perfect example of what not to vote yes on. I think this will help everyone in the long run and it will answer a lot of questions before we even have the Finance meeting because it will be clearly defined in the information that we get from Mrs. Tremblay. Currently she, as of last evening, she was not able to provide that because it was not provided to her. It just extends the length of the meetings and generates more questions. This will help everybody out tremendously.

Chairman Tollner

Is there any further discussion?

MOTION CARRIED

O-07-89

Endorser: Mayor Bernard A. Streeter
Alderman-at-Large David Rootovich

**AMENDING THE COMPOSITION OF THE HUNT FUND AND IRA F. HARRIS
LECTURE COURSE FUND BOARDS OF TRUSTEES**

MOTION BY ALDERMAN TOLLNER TO HOLD IN COMMITTEE

ON THE QUESTION

Alderman Deane

Could you explain that ordinance? What is the purpose behind it?

Chairman Tollner

It was trying to update it. A lot of the stuff that they are doing right now – they want to tighten it up and update it a bit because it hasn't been updated in quite some time. In doing so, it was forwarded without some additional input. Alderman Rootovich was going to come tonight to speak to it, and got caught up in Concord. Mr. Fredette had some changes he wanted to make, and he wasn't able to make the meeting tonight.

Alderman Deane

Thank you

MOTION CARRIED

O-07-90

Endorsers: Alderman-at-Large Fred S. Teeboom
Alderman Daniel Richardson

**REVISING THE COMPOSITION AND PROCEDURE OF THE ETHICS
REVIEW COMMITTEE**

MOTION BY ALDERMAN RICHARDSON TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Alderman Richardson

I have worked with Alderman Teeboom on this particular ordinance change. My experience on the Ethics Review Committee has shown me a lot of flaws in our present ordinance. There are a lot of problems with it. One of the primary problems that Alderman Teeboom I believe he was mostly concerned about assuring that then process is well documented in the ordinance. There are several other things that I noted that needed to be corrected. I had intended tonight to actually put together a listing of all of those things, which this ordinance change corrects, but to highlight one or two of them – informing the complainant and the person who is complained against – informing them of the results of the committee's deliberations – that was not specified. Clearly informing them of the actions of the committee was not specified. Timeframes were not specified. This cleans up an awful lot of things that needed to be dealt with.

For the Full Board I intend to put together that listing of what was previously wrong with the prior ordinance and specific relation to the new ordinance that we have here.

Chairman Tollner

If I look at the analysis from the Legal Department you have totally revised not just the composition, but as you stated earlier the procedure of the Ethics Committee. In the back, I think it might be a good

idea – the analysis in the back says this legislation would replace the existing Ethics Review Committee ordinance established with basically 5 citizens, 3 non-voting advisory members on the committee with a committee of 5 regulars and 3 alternate members appointed by the Mayor, and those members would be approved by the Board of Aldermen. It says it contains the rules of procedure for the conduct of hearings. I think when it does go to the Full Board I think there will be a lot of questions. If I am looking at Section 1 and going 3-4 pages, is all of that new? I don't see anything crossed out in italics. Is it safe to assume that it is all new?

Alderman Teeboom

If I can address and add to what Alderman Richardson said, I was concerned about what happened in that particular complaint where one member turned out to be the remaining member who voted himself into non-public session, who then turned out to be the one sole person hearing the case and then the one sole person judging the case. That is fundamentally flawed. That concerned me. I had a whole bunch of e-mails going back and forth about what happened. It had nothing to do with the non-public part of the thing.

As I dug into it I met with Attorney Bennett. I have a lot of regard for Attorney Bennett – he helped a lot on this. The first thing I said to him was what are the rules of procedure and he came up with some notes that he pulled out of his briefcase, and he said I sort of tried to outline the procedures as I went along. That is fundamentally flawed. Anyone that gets accused of anything ought to know ahead of time exactly what the rules of procedures are, and ought to be given a copy of it before you walk into the hearing day one. It applies also to all of the people who participate. That was a serious error.

The rules of procedure you see in here are basically provided by Attorney Bennett slightly modified. Attorney Bennett went back and forth with this thing a number of times. I personally went over this for about ½ and hour to an hour with him. These rules of procedure are solid, and they have the attorney's blessing.

The composition is important. What we had before I think was almost an atrocity. It allowed three non-voting advisory members to participate. They were members of the administration; police department members, member of the Mayor's Office, and I forgot who the third was. Administration has no business having members in. They had Mark Sousa who was at that time the Administrative Assistant walking in and becoming the Clerk. There was no definition of a Clerk. I could sit here for half an hour because I am so upset about what happened. That is why I put a lot of time into this. It is not easy to do. It is easy to look at a judgmental process and say gee how did they come up with this. The trick of it was to come up with it in just a few pages. It covers the whole thing – how you get charged, how you file a complaint, how you conduct the hearing, how you come up with the results, and publish the results. That is the whole soup to nuts. I can tell you it wasn't long ago that I was almost going to be accused of an ethics violation myself, and I won't go into details, but if the previous one would have gone in I would have been very worried about what process I would go through. With this in place I would have no problem going into the process.

Chairman Tollner

And I also think they hadn't had – the other problem was they hadn't had a number of appointees.

Alderman Teeboom

Well that is the other problem, but this says you cannot run a hearing unless you have 3 members

present. Now you say I can't do it in 30 days, well you better have that committee filled. If you are going to start filing charges against people then you have to be fair to those people. Fairness is an American concept I feel strongly about. Our legal system is supposed to be fair, and all in all most of the time it is. Our ethics review process – it is not a judicial process. It is a quazi judicial process because in the end it is not binding. It is an advisory to the Board of Aldermen and advisory to the Mayor. Any Alderman can be charged with an ethics violation. It is very easy to be done. It doesn't take much to be charged. Now this goes through a review process before you get formally charged. There is a legal review of that charge, and it is not secret. Well the publication that was going to be a charge is ... **tape inaudible**... what is in that charge is secret.

Alderman MacLaughlin

I would just say that when we get into the area of ethical questions it is in part due to interpretative means that you might approach the topic relative to any member of this board or any member of a board or commission, and it sometimes is prompted by the tone in which the questions are asked or the level of bias in an opinion based on someone's actions. We need to be conscientious of the fact that the members of the boards and commissions in this city who agree to serve are to a large extent volunteers. They are doing this for the most part, as we have seen this evening with the round of nominations, the best of intentions. Over time, due to length of service and complexity of issues, I think sometimes various members of boards and commissions can become jaded and tempers can flare and emotions can run high. Certainly things taken out of context and the next thing you know you have accusations of inappropriate things being hurled about.

We need to always try to be aware of the fact that the tone in which we level these complaints towards one another can always be adjusted, and can always take out act to the next level. We need to make government more civil. We need to make our communication level better. We need to always work as a group to improve that.

I am stunned really over the last four years my involvement on this board the increasing occurrence of ethic violation charges being bandied about via e-mail and other things. I think we need to be aware when we are sending communications and questions to various entities within the government both volunteer and compensated that we need to be aware of how those questions might be received, and we need to avoid deliberately provoking antagonistic responses. That is my comment.

My question is an easy one. Alderman Richardson referred a moment ago, in his remarks, that there is a list he is preparing for the hearing at the Full Board of this legislation of the changes in the legislation. I am wondering would it be better that list be identified here within committee before we take any action.

Alderman Dion

If Alderman MacLaughlin is waiting for an answer, I will wait until he gets his answer.

Alderman Richardson

Was that a question to me?

Chairman Tollner

No. Alderman Dion is just making a statement, and then I think Alderman Deane. He said if he is waiting for a list then he will wait correct?

Alderman Dion

Right. I have a statement I want to make, but I certainly want Alderman MacLaughlin to get an answer to his comment.

Alderman MacLaughlin

I know that the answer will be forthcoming in a moment so I would certainly love to hear Alderman Dion's comments.

Alderman Dion

Thank you. Mr. Chairman in the years that I have been on the Board I can only recall one meeting of the Ethics Review Committee. I wish there was no need for any. Unfortunately we did have one. Like Aldermen Teeboom and Richardson I was very disturbed with the way that meeting was run. I was disturbed with the fact that there was no quorum of the committee voting on this. To the best of my knowledge there was only one person that voted. I don't think that is our democratic system. I hope we can rectify that. I certainly was disturbed with this particular case. I am not going to go into it because I don't want to get in an e-mail situation and lawyers chasing me or anything like that, but I was very disturbed with that case. I hope this will rectify it. I don't like one or two people on a committee deciding the fate of anything. I didn't like the way it was handled. I didn't like the fact that they went into non-public session that the people couldn't even listen or hear or read about what went on other than innuendos. I will support this legislation.

Alderman Deane

I will yield the floor to Alderman Richardson to answer Alderman MacLaughlin's question. Your question is for the list that he has and the concern is over whether other people – you don't want to have this discussion at the Full Board level?

Chairman Tollner

I don't have any problem with anything so far. Alderman MacLaughlin made a request that Alderman Richardson had previously stated that there was a list of items regarding this legislation, and his request was he would like to see those; I am not speaking for Alderman MacLaughlin, before he was to proceed.

Now I guess what I will do is ask Alderman Richardson do you have a list that you could share with us?

Alderman Richardson

I have a whole bunch of notes that I took during that process, during that experience, and I compiled those into thoughts, and I used those in working with Alderman Teeboom. What I intended to do was to put those in a cohesive form point by point to show the prior ordinance and how it failed us, and how this ordinance then remedies that. I have not actually put that together yet. It is not available at this point, but I intend to present that.

Chairman Tollner

Let me make a suggestion, and see if this works for people. Maybe some time between now and this weekend if you could put that list together and send that list in a memo form to the Board of Aldermen so that they can review that and have time to digest that a few days prior to the Board of Aldermen meeting – would you be willing to do that?

Alderman Richardson

Certainly. If this passes tonight with a recommendation...

Chairman Tollner

Either way it won't be on the agenda for the next Board of Aldermen. How about this – at a minimum a week prior to when this will be on the Board of Aldermen's agenda would you commit to sending an e-mail not only to the committee but to the Board of Aldermen providing your list, we could pass the legislation tonight with the understanding that the list will come about a week prior so we can read it and digest it. If they have any questions they can contact you prior to the Board of Aldermen meeting, and then that way we have the information days in advance of voting on it. How is that?

Alderman Richardson

Absolutely.

Chairman Tollner

Is that a good compromise? Alderman MacLaughlin are you comfortable with that?

Alderman MacLaughlin

Yes.

Alderman Deane

I really don't want to – I am really not concerned with whatever Alderman Richardson is going to present to us. I appreciate his efforts. I look at this ordinance in a different light. Quite frankly it is obvious that the system failed. The process not only failed it failed the one that was accused, it failed the one person that was left as judge and jury, and it was just, in my mind, was a lack of ability to

actually keep the process – the process had no integrity, and it was allowed to lapse into the circumstances that it was allowed to lapse into. Unfortunately an issue came to head and there was no instant ability to change what hadn't been maintained. That is what happened.

Chairman Tollner

I think the 3-4 previous speakers have gone over this already.

Alderman Deane

And...

Chairman Tollner

And I am just – we are repeating ...

Alderman Deane

You don't want me to continue my comments is that what you are saying?

Chairman Tollner

What I am saying is you don't...

Alderman Deane

Thank you. I am all done.

Chairman Tollner

Okay.

Alderman Deane

I think it is rude for you to interrupt me ...

Chairman Tollner

Alderman Deane...

Alderman Deane

...I know you are the Chairman, but it is rude.

Chairman Tollner

Alderman Deane...

Alderman Deane

It is rude...I am sorry it is rude...

Chairman Tollner

Alderman Deane...

Alderman Deane

I have my opinion. You interrupt me while I am speaking. I just think it is rude. Thank you.

Chairman Tollner

Are you finished? Okay now what I was trying to accomplish is to move the agenda forward. What you were stating is what previous speakers have stated on two or three occasions. That is the only thing that I said to move forward. Is there any further discussion on the legislation?

Alderman Deane

I will remember that in the future.

Chairman Tollner

Alderman Deane you weren't recognized.

Alderman Teeboom

For Alderman MacLaughlin's interest – most important part of this legislation – I said it before and I will say it again – under rules of procedures starting on Item B – composition is important and has changed. Here is a change to the most important part of the rules and procedures – was shocking to me is you walk into a hearing ...

Chairman Tollner

Alderman Teeboom let me .. please what I am trying to do is to make sure that this meeting doesn't end at 11:00 p.m. or 11:30 p.m. I just need to be consistent because the previous speaker was annoyed when I tried to move the conversation forward....

Alderman Deane

Absolutely...

Chairman Tollner

Alderman Deane please. What I am trying to do. I think we understand that the previous process didn't work.

Alderman Deane

He doesn't want to hear ...

Chairman Tollner

The legislation is good legislation. I don't think we need to repeat again what happened in the past. I think everybody on this committee; everybody in the room would agree it didn't work. I think the intent that you are trying to do here tonight and Alderman Richardson is to move forward this legislation. I think we are at a point right now where we are ready to vote on it. If you want to add any new information we will accept it.

Alderman Teeboom

I am just going to say you can make up a list, but the list itself is going to be more exhausting than the legislation itself I can tell you. I can tell you because I have had 15 drafts of this thing before we came up with this thing. The essential difference, if you look at the difference between this one and the previous one, which is before the list – forget the list. There are no rules of procedures in the previous documentation – end of story.

Chairman Tollner

I think that is what this legislation is addressing.

Alderman MacLaughlin

Thank you Mr. Chairman. I admire the essence of this legislation and I get it. I read well and I've got it. Yet one of the co-authors of it is stating tonight that perhaps some additional work that he intended to do has yet to be done via this list. Since that sounded like it was important to him it is therefore important to me. I don't know what list is. I do now know that it is going to be a sort of a more organized form of some extensive notes that the co-author feels is important for the Full Board to know so my point in bringing it up as an issue at all was not to in any way cast an aspersion upon the intent, which I agree seems worthy from what has been described. It is simply to make sure that the co-author of this ordinance, which is a significant ordinance by virtue of it being here in front of us, is getting the attention that he intended before we actually enact it. That is my concern. That is why I brought it up. Alderman Tollner's proposed compromise in light of the intent that has been presented and the background that we are all hearing, is agreeable to me. I just felt that I should let the co-author know that it was important to him, it was important to me. I think that is a worthy point.

Chairman Tollner

Is there any further discussion on the legislation?

Alderman Richardson

Just one point – During the process of organizing for the event which did occur earlier in 2006, the Corporation Counsel did in fact assist the committee in coming up with a set of rules of engagement if you will, which were used in other government entities as a default set of procedures, which were adopted according to the rules which presently exist in adopting any such rules as we see fit was

appropriate. They were very useful. They are tried and true measures in other forums. In fact, I do believe that those particular rules are in fact what is reflected to a significant degree in this new ordinance. They are just codified instead of just leaving them optional as to which rules that the Ethics Review Committee wants to observe. It actually codifies it to let the participants know ahead of time what in fact they will be experiencing. Thank you.

Chairman Tollner

Just so everybody's clear, Alderman Richardson will get a memo out to the Full Board prior to the Board of Aldermen meeting where this will appear on the agenda. Is there any further discussion on this legislation?

MOTION CARRIED

MOTION BY ALDERMAN TOLLNER TO TAKE FROM THE TABLE R-07-152

MOTION CARRIED

R-07-152

Endorser: Alderman Daniel Richardson

IDENTIFYING THE LAND USE ADMINISTRATIVE OFFICER TO THE PUBLIC

MOTION BY ALDERMAN TOLLNER TO RECOMMEND INDEFINITE POSTPONEMENT

ON THE QUESTION

Alderman Richardson

I intend to propose an amendment to this legislation.

Chairman Tollner

I did contact Director Hersh and asked her to identify the Administrative Officer to the public separately in the city telephone directory, and she said she would process that. The next time they print a new one they would identify those individuals. I think that was the intent of the original legislation. I think at the last meeting at least it was my opinion, I won't speak for the committee, that I think that a piece of legislation wasn't necessary to accomplish that. At the last meeting I think the vote was 2-2. That is why I made the motion to indefinitely postpone the legislation. Thank you.

**MOTION BY ALDERMAN RICHARDSON TO AMEND R-07-152 BY
... tape flipped ...**

AND ADD THE FOLLOWING PARAGRAPH "THE CITY OF NASHUA LISTING IN THE PUBLIC PHONE BOOK CONTAIN ENTRIES FOR PLANNING AND ZONING ADMINISTRATIVE OFFICER, BUILDING ADMINISTRATIVE OFFICER, AND CODE ENFORCEMENT ADMINISTRATIVE OFFICER, PROVIDING THE PERSON'S NAME, ADDRESS, AND CITY PHONE NUMBER

ON THE QUESTION

Alderman Richardson

My real intent was to make the public aware of the means to get a hold of the Administrative Officers for the City of Nashua, to identify them to the public.

Previously the stated change was to put the contact in the city telephone directory. That really did not accomplish the goal that I intended. Certainly someone could call into the city and fish around and say can anybody tell me who the administrative officer was. What I would like to do is have it in the city phonebook so that anybody can see that and it becomes readily apparent who they should contact as is the probably 50 odd telephone numbers for the city already. It is an important position. People are always asking about who do you call for the enforcement of the rules, enforcement of code, enforcement of well the laws of parking, who enforces signage laws, who enforces our building events – someone has a building permit and someone believes there is a problem there. Who do you contact? Who is the person that is going to be checking that out? That is what I intend to do with this amendment is to actually identify that person in the city phonebook not the city's phone book internally, but the public phone book for the City of Nashua.

Alderman MacLaughlin

In light of what we just heard from the Chairman regarding the fact that the Community Development Director plans to do this anyway, I think that negates the need for an amendment and also, therefore, supports the action for postponement. As I stated earlier, I view this as mostly redundant and not really necessary. I will vote against the amendment, and given the opportunity I will support indefinite postponement.

Chairman Tollner

Is there any further discussion?

Alderman Richardson

Just to clarify the intent, it is to put this – to identify the administrative officer in the public phone book that everyone has in their home.

Alderman Williams

I would just like to ask for the distinction between what Alderman Richardson just said and what the Community Development Director's plans are for the city's directory. That is not the same as what he is referring to is it?

Chairman Tollner

No. Well they are two separate phone books. I can't tell you how the yellow book is going to take the information from the city and place it in the phone book. When I spoke with Mrs. Hersh she said she would pursue next time that they revise the city directory and the information that the public can access that they would try and segregate these items that were originally listed in the original legislation. Two things will happen; either the yellow book or whoever does it will recognize that. If

they don't recognize that like any other entity the city will have to pay a fee just like you would if you were a dentist or a lawyer or whoever else trying to advertise a little differently, the city would probably have to pay for that.

The bottom line is I don't think it is necessary. It is going to be identified on the city web site; it will be identified on the city telephone directory. I think that is sufficient.

Alderman Williams

This is to the maker of this legislation – this calls for putting it in the telephone directory – the Verizon white pages right?

Alderman Richardson

Yes.

Alderman Williams

Not the yellow pages that cost money for commercial advertising, but the Verizon white pages?

Alderman Richardson

This would be the white pages ...

Alderman Williams

Under Nashua City of?

Alderman Richardson

Yes sir.

Alderman Williams

I don't believe that costs anything under Nashua City of in the Verizon white pages. If we could stipulate in here that is what it means and then it would be clear that it wouldn't cost anything.

Chairman Tollner

The bottom line is the city will provide similar information that we have on our own directory or broken out by division to the telephone book as we have in our own phone book. If you want a guarantee that those people's names will be published in that manner – I couldn't guarantee it because I don't think the city can guarantee how the telephone book will publish it.

The bottom line is the city will provide similar information that we have on our own directory or broken out by division to the telephone book as we have in our own phone book. If you want a guarantee that those people's names will be published in that manner – I couldn't guarantee it because I don't think the city can guarantee how the telephone book will publish it.

Alderman Williams

It is only published once a year anyway.

Chairman Tollner

The other thing too is we haven't even discussed if that individual leaves with that phone number it is in there the entire year. I don't think that every time someone is employed by the city and their replacement is there they will always have the same telephone extension.

Alderman Williams

I want to ask the maker of the legislation a couple more questions. To that point, why do we want to tie in the name as opposed to just the title and the phone number? What was the rationale for the name as well?

Alderman Richardson

So that the person in the public would know who to ask for at the other end of the line. Agreed, that might not be necessary to put the person's name in there.

Alderman Williams

The title and phone number might be sufficient.

Alderman Richardson

It might be sufficient.

Alderman Williams

So title and phone number wouldn't require annual updating so much as putting the person's name. I don't have a copy of the current phone book.

MOTION BY ALDERMAN WILLIAMS TO HOLD IN COMMITTEE

ON THE QUESTION

Chairman Tollner

I am going to get a phone book.

Alderman MacLaughlin

Before the Chairman goes through all that effort, I am intimately familiar with the listing of the phone book. It is in there already. Within Community Development, there is a breakdown of the different divisions that are there and these titles are there. That part is already there. It is already in place. Where it is not in place we are hearing that Director Hersh is willing to put it in place. That is going to be accomplished without passing a resolution. Until it is proven otherwise I guess I still don't see the need to put in code what will be put in practice because it is already there now.

Alderman Richardson

Actually no it is not there. If you look at the ordinance the Administrative Officer is appointed by the Mayor. It is not always the Planning Director. It is whomever he chooses. By default from the prior land use code the present Planning Department Director is the Administrative Office, but it will not necessarily be him it could be anyone else that the Mayor so chooses.

Chairman Tollner

I don't necessarily think that is the case. I think originally if you go to some of the smaller towns there is one person in those towns that is designated. In this case, after talking to Mrs. Hersh, there are a number of people in her department that would be responsible for this. I think it would be incorrect for me to say that it is not up to the Mayor to designate that person, but I would say it is safe to say that it is incorrect to say that the Mayor would be the one picking that individual because those responsibilities belong in Director Hersh's department.

Alderman MacLaughlin

Thank you Mr. Chairman. I am going to try this one more time and then I will be quiet. If I were a citizen using the director, the yellow book, Verizon, white page or yellow, and I go to the City of Nashua government services section – it is either in the white pages or it is in the government kind with the blue border or it might be if it is school related in the yellow pages. That is how it is organized. I am going to find within the appropriate division these particular categories, and there will be a number there with a specific extension. It is there. Now it doesn't tell me who is going to answer the phone when I call, but once you place that call every department and division in this building or even the departments and divisions that are located in separate buildings are very good and very helpful in directing the call to the appropriate person. That is the practice that is already there.

Do you know who you are going to get – not necessarily because that person for a variety of reasons the one that perhaps you would like named may be away from their desk, out on the road, vacation, etc. The essence of this legislation is to do that which is already done. That is my point. I have made that point three times, and I promise the committee I will not expand on it further or expound on it again.

Chairman Tollner

Any last comments? The motion on the floor is for the amendment.

MOTION FAILED

Chairman Tollner

Back to the original motion for indefinite postponement. Is there any further discussion?

MOTION CARRIED

MOTION BY ALDERMAN RICHARDSON TO TAKE FROM THE TABLE O-06-49

MOTION CARRIED

O-06-49

Endorser: Alderman Daniel Richardson

**DELETING UNENFORCEABLE NON-PUBLIC MEETING PROVISIONS AND
URGING BOARDS TO INVITE MAYOR AND ALDERMEN TO PARTICIPATE**

MOTION BY ALDERMAN RICHARDSON TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman Tollner

Basically, and Alderman Richardson you can correct me, basically what this legislation does is just urge the different entities to invite and include the Board of Aldermen. It doesn't necessarily mean that they have to?

Alderman Richardson

Correct.

Chairman Tollner

That also doesn't mean that they have to vote to either invite or not invite they can just decide whether they want to invite the Mayor or the Board of Aldermen to those non-public sessions or provide those minutes?

Alderman Richardson

That is correct.

Chairman Tollner

So it is just an opportunity to ask them to provide due consideration correct?

Alderman Richardson

That is correct.

Chairman Tollner

Is there any discussion?

Alderman Richardson

I just wanted to let you know that I knew that this ordinance was in place that the various boards would have to take a vote to exclude the attendance of an Alderman or the Mayor in a non-public session. I actually took the opportunity to try to exercise that at one point in time. In doing so I talked to the people of that particular board about that, and didn't push the point too far. However, what I did do is I got them to request of their legal support an opinion as to the viability of the existing ordinance as to whether it could be challenged or not. In the interim, Alderman Deane actually requested of our city legal counsel what experience they have had with that, and they have had actually no prior experience in enforcement of that ordinance.

Later I actually got opinions from, it happened to be the School Board, Attorney Clawson who was representing the School Board gave them an opinion, and I forwarded that opinion, which indicated that it was quite challengeable, forwarded that opinion to city legal counsel, and the city legal counsel in fact concurred that it might not withstand challenge. Also he pointed out that when that ordinance was discussed prior to being passed, he did express reservations about it. It did get passed at the time.

I am not one to like to keep on the books ordinances, which are not enforceable, or of any usefulness. I would like to put something in there in its place, which at minimum represents the intent at worse just completely remove it altogether. I know there was good reason to put that in there in the first place several years ago and so wanted to give the opportunity to put it in a more reasonable form that would appeal to the common sense of various boards that they make every effort to include Aldermen and the Mayor in the deliberations whenever possible particularly when it regards business that will be ultimately propagating into the purview of the Board of Aldermen. That is the intent of this ordinance.

Chairman Tollner

Is there any further discussion?

MOTION CARRIED

MOTION BY ALDERMAN DION TO TAKE FROM THE TABLE O-06-63

ON THE QUESTION

Chairman Tollner

Could we possibly take O-06-50 first?

MOTION WITHDRAWN

MOTION BY ALDERMAN TOLLNER TO TAKE FROM THE TABLE O-06-50

MOTION CARRIED

O-06-50

Endorser: Alderman-at-Large Fred S. Teeboom

DEFINING VETO PROCEDURE FOLLOWING RECONSIDERATION

MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman Tollner

I think Alderman Teeboom has some amendments he would like to make.

AMENDED MOTION BY ALDERMAN TOLLNER TO AMEND O-06-50 BY REPLACING IT WITH THE COLORED COPY RECEIVED THIS EVENING

ON THE QUESTION

Alderman Teeboom

The amendment was from Attorney Connell after seeing the changes that were made in committee last time. I also checked with Alderman Bolton. Alderman Bolton refused to deal with the subject – said he would no longer correspond with me. Fortunately Attorney Connell did, and recommended the colored changes.

To help this along, and this sort of does what Alderman MacLaughlin asked for in the other ordinance. It kind of gives you a flow chart that stays on the language. It took a long time to come up with this language. It is amazing how complex a veto motion is. If you look at the current ordinances it says do it according to the rules twice in the current ordinances. Well we don't have any rules. This pins down the rule – absolutely. It took a long time to come down with the language on the page. The flow chart explains all the different paths. I can go to the flowchart, but well let me just briefly point out the flow chart. Go to the top – if a measure is passed and it is vetoed that means that the measure has failed. At this point a member on the prevailing side votes to reconsider the legislation so now you have the reconsideration motion, which itself is quite a complex motion. We vote to reconsider – you take two votes, you can either pass or fail or you take no vote at all, which is like a fail. Let's go down the failed side to the right – if it fails the veto is upheld meaning the measure is still failed, but you can ask for reconsideration of a failed vote. If you remember there was a veto and Alderman Cookson asked that very point. It got very confusing in the discussion.

In researching all of this, yes you can reconsider, and that is what that block on the right says. If the reconsideration fails it is failed. However, you can make the reconsideration at the next regular board meeting or at the same meeting. If it passes you go back to where it says passed – you can vote to override. So go back to the passed position – now you are passed and you vote to override. If it passes now you are back into the ready to vote to override. The vote to override -- now you are past reconsideration at the second level of the motion. Now you vote to override or not override. Now you have a pass or fail. If it fails it is not the end. A decision that fails on the vote to override is not the end of the story. It can go to any of these secondary motions. I think they are called – well they are

procedural motions in Masons – you either table, refer to committee, you can amend, you can indefinitely postpone or you can reject. All of that can happen even though you failed. If it passes an override is passed.

Chairman Tollner

Can I ask you a question – the difference between your definition of indefinitely postpone and reject?

Alderman Teeboom

That is one of Bolton's points when he still talked to me. He pointed out to me there is such a thing as a reject motion, which is not the same as indefinitely postpone and it is in Masons. Masons does not explain reject.

Alderman Dion

The title is rescind.

Alderman Teeboom

No. There is a reject. I put it in because he said you have to put it in. Attorney Connell agreed. Indefinite postpone implies no further action during the session. Reject implies you can come back to it. The rescind motion allows you to go back to anything anyway so in a sense they are the same – it is a difference without any meaning. I made this as complete as possible.

You have all of these motions you can go through. If you reject then obviously override has failed and the measure has failed. If you indefinitely postpone at this point the measure has failed. You can amend the motion – If you amend the motion and you substantially amend the motion the arrow goes all the way back around and you are right back to the beginning. You can also amend and send it to committee and the committee can do all of those things because the committee has motions of its own. They can practically table, amend, and if it is substantially amended and approved by the Board it goes back to the top. It can be amended at the full Board level or it can be amended in committee.

The nice thing is that we have this all down in two pages. Now it is still a diagram that will need to make it into the ordinances. If you follow the language it is pretty clear.

Chairman Tollner

You have done a great job on the grid. The grid looks great.

Alderman Williams

I did hear the last time we were discussing this at the Full Board that diagrams don't make it into the ordinances. Unfortunately I think we need the diagram with this ordinance. Is there a way to get it published somewhere? This diagram is invaluable to understand what this ordinance says. Otherwise it sounds like a bag of marbles.

Alderman Teeboom

If you read the text carefully you can work yourself through it. The same applies to reconsideration. I did the flowchart for reconsideration. This is more complex obviously because first you have a reconsideration then you have the veto motion.

Alderman Williams

We can't attach this to the ordinance?

Chairman Tollner

No we can't. Maybe what we could do is make a copy of it and put it in the frame and hang it in the back.

Alderman Teeboom

What I do plan to do is publish this with a cover letter like I did last time, and send it to the full Board.

MOTION BY ALDERMAN WILLIAMS TO AMEND TO INCLUDE A SECTION THAT SAYS TO COPY AND FRAME THE FLOWCHART AND PLACE IT IN THE LEGISLATIVE OFFICE

Chairman Tollner

Under separate memo because it can't be part of the legislation. I understand. If it would suffice at the time that the legislation is approved how about on behalf of the Personnel Committee, if everybody agrees, I would send a memo to the full Board with the anticipation this legislation is being approved is our request that a framed copy of the flow chart would be placed in the Legislative Office?

Alderman Williams

Wonderful.

MOTION WITHDRAWN

Alderman MacLaughlin

I am not sure how I want to make this observation, which is only my view. We can't always have – please let me preface this response to the discussion in a positive in that I do respect the time and effort and the organization of the chart, and I agree it is a great chart. This part is what is going to go into the book of regulations. We have to sort of take what happened when we were talking about the two-family homes discussion and the desire for drawings and now this one with a desire for a flowchart, we have to be cognizant of the fact that not every ordinance and resolution that we adopt or enact is going to be able to be illustrated in such a way. I just hope that this is not a pattern that is going to overrun how the city is governed. When you read the text, the text illustrates the diagram in essence. I just want to make that point.

The second thing is by posting this anywhere it doesn't necessarily mean that there will be adherence to it. For example behind Alderman Dion on the wall is a code of conduct that has been framed, it is listed there, and there are moment when we totally ignore its existence. In fact, I remember recently Alderman Richardson going over to the wall to read it during the course of a meeting. I want to caution us from getting too reliant upon this sort of thing or the back wall in the back room and every wall space will be taken up and totally wallpapered with this kind of thing. That is my comment.

Alderman Teeboom

I was going to say the reconsideration is a flowchart that should hang up. In the end I am going to keep a copy of it because he can't remember this stuff. You also have to remember most veto motions are not going to go through all of these things. This is a complete process complicated as it may be. Most of them go veto, reconsider, take a vote, pass or fail, end of story. People reconsider – when was the last time you heard someone who didn't do a reconsideration of a veto motion, but you can do it. I am not saying – use this as a guideline, if you did it, I would take my name off and it would be fine. In the end, I am going to keep a copy of the flowchart. This is probably the most complex motion I have found in the whole book, and that is because Masons doesn't go into all of this detail. Masons leaves these things to be interpreted. You look at the veto description, and it doesn't go into all of this detail.

Alderman Dion

It brings to mind not too long ago when a member intentionally voted with the prevailing side in order to ask for a reconsideration. There have been games being played in that vicinity.

Chairman Tollner

That game has been played for years you are right. Alderman Teeboom you and I have had a number of conversations on this legislation. I think you have done a really good job with it. You stuck with it, and went back to Corporation Counsel 2-3 times. I know when this is passed in committee and forwarded over to the full Board at that full Board meeting that night I am sure we are going to have a healthy conversation on this particular legislation. I want to recognize your effort with this legislation. Are there any further comments?

Alderman Richardson

I want to ask a question about the flowchart. The first thing we did was go off onto the right hand side of this flow. If we go through from the top down measure passed, veto, vote to reconsider which failed, then we go to veto upheld, then we go to the next block, which says reconsideration next regular board meeting – member on prevailing side. Now that is a reconsideration of what? The reconsideration of the vetoed measure or the reconsideration of the upholding veto motion? Which one is being reconsidered at that point?

Alderman Teeboom

The vote to reconsider failed – what that means is the veto got upheld. However, you can reconsider because really the vote to reconsider is reconsidered – you can reconsider a reconsideration motion.

We got that from the other flowchart. You can go to the next meeting and reconsider that failed vote and hopefully it will pass.

Alderman Richardson

So really what you can end up having is two reconsiderations for the same – reconsideration motions and votes for the same veto.

Alderman Teeboom

You can reconsider the reconsideration vote. That is an important point.

Chairman Tollner

So long as a member on the prevailing side is making that motion.

Alderman Teeboom

A member that made the motion fail says I want to make it pass.

Alderman Richardson

For each of these cases a vote for reconsideration will have to be someone on the prevailing side of which vote?

Alderman Teeboom

Of whatever the vote is, whatever vote you take. If the veto fails...

Alderman Richardson

So what you are saying...

Alderman Teeboom

It fails on a tie vote so if you are on the failing side of the tie vote you are the prevailing side. Let's say you vote 6-4 not to reconsider, a member on that 6 can vote to reconsider the next time. That is true of the reconsideration vote. What Masons says strictly speaking a further vote to reconsider is technically not really a true reconsideration vote. That is what Masons says. You have to consider that as a main motion on its own and any main motion can be reconsidered. The reconsideration vote of the veto itself is a main motion that can be reconsidered. It is a very special case. It drove me up a tree to try to figure this out because Masons is unclear. The attorney gave me about 5 different e-mails on this because he struggled with it.

Alderman Richardson

In trying to compare your prior ordinance to this new version it is not easy for me to just see what the

import of the changes is. Could you point it out on the flowchart what area you are affecting with your amendment?

Alderman Teeboom

If a vote to reconsider fails the Board may, upon motion of any member, vote to override the Mayor's veto, or amend – if a vote to reconsider passes so we are on this top block – I have to go through the flow. Let's go here – the Board may take any action on the motion to reconsider made by a member who voted on the prevailing side on the original vote. That is a motion to reconsider. We are now under A. A vote to reconsider shall be effective on a simple majority vote of those members present and voting. If no motion to reconsider is made – now we are on the right hand side – if a vote to reconsider fails, the vetoed item shall not take affect meaning veto is upheld. A failed vote to reconsider may be reconsidered at the next regular meeting of the board, which is the next block down. But not following that meeting's adjournment – that is on the right.

If a vote to reconsider prevails – so now I am on the left hand side – the board may upon motion of any member, vote to override the veto – so once the motion to reconsider passes we are now into the next step. We are now into the veto itself part – any member can make a vote to override the Mayor's veto or amend – so you can make a motion to override or – see the arrow going down to the right – you can amend followed by a vote to pass or table or refer to committee or you can reject or indefinitely postpone or table or refer to committee. So you can vote to amend – we are on the bottom – followed by a vote to pass or table or refer to committee.

Alderman Richardson

I know that Alderman Teeboom would like to move on with that, but I would like to stop here and talk about that part of it. Under Section B – a failed vote to reconsider may be reconsidered. It says that a failed vote to reconsider itself can be reconsidered.

Alderman Teeboom

That is correct.

Alderman Richardson

We are reconsidering the vote to reconsider.

Alderman Teeboom

That is what Alderman Dion was asking about earlier – precisely that point.

Alderman Richardson

So if we reconsider the vote to reconsider, and that passes, then aren't you then at the point where you can say okay now we can vote on whether we actually want to reconsider the main point which is the measure which was passed?

Alderman Teeboom

That is correct. If you look at it, you vote to reconsider – if it passes you take the arrow here and now you can decide to override or you can even postpone that. You can now vote to reject or indefinitely postpone, amend, refer to committee or table or you can even take action on it. It says in the footnote no option to override the veto is preserved until final action is taken. It is a point I think that Attorney Connell was making here and at the full Board. He said until you take final action on the veto it stays in possession of the Board.

Alderman Richardson

Okay. Please continue.

Alderman Teeboom

You can table, send it back to commit, act on it – do any number of things, but you have to finally dispose of the veto.

Alderman Richardson

Please continue.

Alderman Teeboom

Well that is it. Then we went up to C and now you want to step to D – if the Mayor's veto is overridden by affirmative roll call vote of at least 10 members of the Board, final passage shall become effective. The next thing – if the vote to override fails – it is not the end of it. You may then move to amend followed by a vote to pass or table or refer to committee, or reject, or indefinitely postpone, or table – because you are amending the original motion. The committee can play around with it and bring it back and amend it. If it passes that and you have substantially amended it, it goes all the way back to the Mayor. Until you get rid of it by finally saying I reject it or I indefinitely postpone it, which are the only two options available, you keep playing with this thing – or the reconsideration fails the second time that gets rid of it or nobody votes for reconsideration the second time that gets rid of it – or nobody votes to reconsider it the first time it gets rid of it. It is complex. The flowchart works.

Alderman Richardson

I am tracking what the flowchart is versus what the text is.

Alderman Teeboom

Now we are on F – F is a prevailing vote to substantially amend ...

Alderman Richardson

I would like to talk about substantial.

Alderman Teeboom

Substantially I questioned myself. It is the language used in Masons. If you look it up in the dictionary it says in good measure. It means in a significant manner. It is not trivial. You didn't change a couple of words, you made a significant change.

Alderman Richardson

Fundamentally what you are trying to do here is echo Masons.

Alderman Teeboom

As much as we can – where it makes sense. I did not change the word substantially because that is sort of open to interpretation.

Alderman Richardson

Which is surprising because usually you are a person who likes a little more precision.

Alderman Teeboom

I looked at it and decided not to change that word.

Chairman Tollner

Alderman Deane why don't you G, and we can move forward.

Alderman Teeboom

If you want to change that word I am open to it

Alderman Richardson

I haven't thought, it has just been ...

Alderman Deane

Point of Order... that is Alderman Teeboom.

Chairman Tollner

That is the second time I did that. I apologize.

Alderman Teeboom

What did you call me?

Alderman Deane

He keeps referring to you as me Alderman Teeboom for some unknown reason.

Alderman Teeboom

Now we are in G. It says the option to override the Mayor's veto following a successful vote to reconsider is unaffected by the vetoed item being either tabled at the full board or referred to committee, and is preserved until the item is finally disposed of by the Board of Aldermen either by override, or amendment and passage, or rejection or indefinite postponement. That is how you get rid of it. I said you could get rid of it by failing it, and you can also get rid of it by passing it.

Alderman Richardson

One other question – has to do with the amendment – now has that been reviewed by Attorney Connell?

Alderman Teeboom

These are the changes the Attorney wants. I can send them back to him. Now he has limited time. Attorney Connell has taken this on and conversed with me numerous times on this.

Alderman Richardson

I may or may not offer an amendment later on to the substantially.

Chairman Tollner

Are there any further comments?

MOTION CARRIED

MOTION BY ALDERMAN DION TO TAKE FROM THE TABLE O-06-63

MOTION CARRIED

O-06-63

Endorsers: Alderman-at-Large Fred S. Teeboom

ESTABLISHING QUORUM FOR THE LAND USE BOARDS

MOTION BY ALDERMAN DION TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Alderman Dion

I think it is very important that this ordinance be passed. First of all it will make our planning and zoning boards fuller to the extent that there should be enough people on there as far as alternates are concerned so that we don't have situations where there is no quorum or a lawyer for the plaintiff will ask for a recess to his case because of not enough people present although there is a quorum. That is why we pass legislation to fill these two boards, change the nomination from the Mayor to the

President of the Board as far as the Zoning Board is concerned. I have noticed on the Planning Board where the Mayor appoints the members that there has been a lot of nominations lately. I think we shook the tree and things are starting to move as far as getting full boards are concerned.

Alderman Teeboom

I have a handout first of all. It is the actual quote of the law. You mentioned earlier we have to go by the law. This is the law concerning zoning board of appeals and the quorum requirement. This particular ordinance has been held a couple of times because the Chairman of the Zoning Board of Appeals mentioned to us there is an RSA. I assured him that Attorney Connell on one of his trips to Concord had researched this particular thing. He looked at this law, and we should take a look at what was handed out.

It says the following: "The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass." That is a 3-member quorum requirement. Currently the ZBA, and I have the bylaws. I think what has happened is to me almost beyond comprehension. The ZBA Bylaws state, and this is the very latest version dated June 13, 2006, "If only three (3) Board members are present, the applicant may request postponement to a time when a full Board of five (5) members are present. If only four (4) members are present. The applicant may request postponement to a time when the full Board of five (5) members is present if he/she resubmits new application fees." To me that is a serious, serious deviation from the law. A number of communities have adopted this, and I can't figure out on what basis.

I ordered municipal law from the local government center. Here it is. You cannot find this rule in this book. Now. Sean Duffy came before us, and said – I think he communicated with Chairman Tollner, and said I have information, and I just missed it by a day. Well I got a copy of that information, and I want to hand that out. That is the letter from the Local Government Center to Mr. Duffy. It is supposed to legally justify what they do. Go to the second page where I outlined. It says "There will certainly be times for every board when a full complement of members is unavailable, but this should be the exception. Proceeding with a mere quorum does satisfy the minimum requirements of statute." He admits it. "For an individual applicant, there is a significant risk of unfairness or error" – this is the kind of opinion – "because of the difficulty of persuading a board to reach a unanimous decision" – this is all just spinning the news. The fact is the legislature allows 3 members of the board to make a decision. Now he quotes see where it says "Fox v. Town of Greenland", this attorney quotes that law as the reason for having 5 members not 3. I pulled that law. It did go to court. Why did this go to court? This went to court because this particular board in this particular town insists on having 5 members and guess what one of the members in a 5 day hearing was absent 2 of the 5 days and he voted, and he voted on I think one side, and the other side took it to court and said this guy should not have voted, he didn't hear the whole story. He was gone for 2 out of the 5 days. The lower court agreed and the upper court did not agree. The point of that whole thing is the reason the thing went to court was because they insisted on having 5 members. If they insisted on sticking with 3 they would have never gone to court. How can this attorney claim that this supports his case that you have to have 5 members - saying this will complicate things and we will have to go to court? If you scan the letter where I marked it you can see the issue is the 5th member and whether or not he made an informed decision.

All I am saying in this ordinance is you go back to state law – when 100 people file into the auditorium upset about something, expecting to be heard, and the developer walks in and says I don't see 4

members here, I don't see 5 members here, I want another hearing, and everybody have to file out, and 100 people stand around and say what just happened. I have seen this happen personally 2 or 3 times.

Alderman Dion

I have seen it too many times.

Alderman Teeboom

The first time I saw it happen I said what is happening here, and I was like the rest of them standing in the hallway wondering what is going on while the attorneys for the developers went out. I came back the second time and they pulled the same trick. I got mad, and that is how I got into this thing. I first went to the Community Development Department and said how can I fix the character of the neighborhood. After researching it further Alderman Dion contacted me about the membership, and I started looking at the quorum. I could not believe that in several communities they have changed the law. All I am asking with this ordinance is to bring it back to where it should be.

Chairman Tollner

I think it is safe to say that you can hear a case with 3, but even in this letter it says for the individual applicant there is a significant risk, and he also states on the last page of the memo – it says “but there is a larger risk to the municipality.” I understand where you are coming from where if there is a hearing and there are only 3 members and the ZBA or Planning Board have left it up to the applicant to decide whether they want to be heard by 3 or 5. I would like to see legislation where that opportunity is equitable for both the neighborhood and the applicant. What can still happen is, if this legislation were to pass, and there are only 3 members present the applicant could remove his application and the very next day re-file it.

Alderman Teeboom

He always has that option, but we don't have 100 members walking in and saying what happened here.

Chairman Tollner

The same result will happen though.

Alderman Teeboom

Maybe, maybe not.

... tape flipped ...

Chairman Tollner

... I think if you do have 50 or 100 people there, and we have seen that, and the applicant decides with only 3 members they would rather have their case heard by 5 – I do think that is a legitimate concern for the applicant because he wants to get a good base to hear his/her case. In saying that, I also think the neighborhood or the city in this respect should also have the opportunity if there are only 3 members there that night to vote on something, the public should have the ability to say I would like to postpone this hearing until we have 5. It all goes back if you had a jury would you be more comfortable with a jury of 3 individuals or 5. Right now what this legislation would do is if an applicant who has spent a considerable amount of time and money on a project is going before the ZBA and they have every right to think that they are going to be heard by a minimum of 5 people, and there are only 3 there, the only choice that individual has that night is to either be heard by only 3 out of say 9 if you include all of the alternates...

Alderman Teeboom

The alternates don't vote.

Chairman Tollner

The alternates don't vote unless you are short members.

Alderman Teeboom

There can only be 5 members voting.

Chairman Tollner

What I am saying is if there are 9 people hopefully between the full members and the alternates that can sit in on a case.

Alderman Teeboom

Five members can sit in on a case Mr. Chairman not 9.

Chairman Tollner

I understand that. What I am saying is you have a pool of 7-9 people, and 5 people can vote so in the case of the Planning Board where a number of people were sick and some people resigned, if you have a huge project and you go up there and there are only 3 individuals and possibly maybe 2 out of the 3 are alternates or fairly new people that we have right now, that project could be in jeopardy and the only choice that applicant would have at that time then is to pull his case and start the process all over again.

Alderman Teeboom

Who speaks for the neighborhood? In equity, there is no one speaking for the neighborhood. You cannot say – you have 100 people there, who speaks for the 100 people? That is a practical impossibility. Usually, unless you have a Wal-Mart situation, they don't hire an attorney because it

costs tens of thousands of dollars.

Chairman Tollner

What I am saying is in some of those situations the neighborhood is there or an individual gets up and it could be a single individual who has a problem with that project – the applicant says there are 3 people here I want to go through with this because he/she may say well this is a slam dunk where the neighborhood is saying the reverse – I wish I had 5 people.

Alderman Teeboom

I have never heard of – I don't know how the neighborhood gets a vote. Unless they have an attorney I do not know how the neighborhood gets a vote.

Chairman Tollner

What I am saying is if we were to put in different legislation where a member of the public who had a concern on a particular project could formally request that 5 member be present – the same protection is provided for the neighborhood, which I think you are looking for....

Alderman Teeboom

I don't know who can speak for the neighborhood. If the neighborhood does not have an attorney present who speaks for that neighborhood – in fact there could be an attorney present for one part of the neighborhood that doesn't speak for the other part of the neighborhood. That is unfairness. The applicant has a vote, the staff has a vote, the members have a vote, but the neighborhood has nothing – they can just speak once. They can't even come back and rebut. The applicant can rebut. Actually again and again and again the applicant gets two bites of the apple and the neighborhood member gets up and even if he speaks for the neighborhood and is told no you do not get a rebuttal we need to know more information. I have seen it again and again.

Mr. Chairman, it is not in the law. If that were in the law it would be in the law. It is not in the law. There is nothing that allows the neighborhood membership to have ...

Chairman Tollner

At a Planning Board or Zoning Board meeting the applicant will make his presentation correct?

Alderman Teeboom

Applicant makes his presentation...

Chairman Tollner

And the neighborhood can get up and provide their comments.

Alderman Teeboom

Right.

Chairman Tollner

Then the applicant can come back and provide additional comments or rebuttal.

Alderman Teeboom

Maybe.

Chairman Tollner

Then the neighborhood can be represented by 1 individual ... at the cell tower I sat through the whole thing. The communication company got up, made their presentation then the neighborhood got up, and there were quite a few neighbors, which was good, then the applicant got back up again, and then there was that one gentleman who was very well versed who was in the neighborhood, he got up and representing the neighborhood he gave the rebuttal for the neighborhood.

Alderman Teeboom

How did he represent the neighborhood? How did he get to represent the neighborhood?

Chairman Tollner

What they do is they give the neighborhood a moment to say one representative can come up and speak on behalf of the neighborhood, and he got up. I am just correcting you because the neighborhood does – they should get a rebuttal, and they do.

Alderman Teeboom

Not always. I have seen it ...

Chairman Tollner

Only unless they decline. That is part of the agenda.

Alderman Dion

Mr. Chairman when you were discussing the voting members Alderman Teeboom sort of questioned the fact that there have to be 5 regular members.

Chairman Tollner

No five voting members.

Alderman Dion

Five voting members – an alternate can be a voting member if there is a full time member that is absent for some reason. An alternate is then put in. The thing is that I don't think we have had enough people in the past, and furthermore Mr. Chairman whose job is it to replace a permanent member that is not going to be there? Who is delegated the task of replacing him with an alternate?

Chairman Tollner

The Chairman contacts the board to say who will be at the next meeting who won't.

Alderman Dion

I would like to know whose job it is to make sure that member is replaced so that we don't have a short board the night of the ...

Chairman Tollner

It is the Chairman.

Alderman Teeboom

Mr. Chairman that is in the – if you read it, that is in the wording. The Chairman makes the replacement.

Alderman Dion

Mr. Chairman I want to talk about the discussion you just had with Alderman Teeboom pertaining to time of each side speaking and the rebuttal. I have attended many of those meetings, and those meetings are pro developer and their lawyers. I have seen times, and Alderman Teeboom is correct, where the neighborhood was not given the opportunity to speak in rebuttal unless there was something new that they were adding. Yet I have seen the light go on – I have seen where there is favoritism being played with the lawyers that are representing their clients to get variances, etc. getting more time to speak, and at the end in rebuttal getting more time and they don't have to come up with something new they can just keep on repeating what they said the first time. I think there is favoritism being played there. I don't think the game is being played fair at all.

Chairman Tollner

If that is the case....

Alderman Dion

It is the case.

Chairman Tollner

... then that is wrong. That is management of those meetings ...

Alderman Dion

I have seen it happen time and time again. It upsets me to see this happen.

Chairman Tollner

... I think the biggest problem that everybody has, and I think the biggest problem and the most legitimate is the applicant has the experience and the neighborhoods don't.

Alderman Dion

The time also Mr. Chairman. I will stress that one more time. They say 5 minutes. I have seen talk as long as 20 minutes, but if the person that is representing or one of the neighbors is speaking they will cut him short after 2 minutes or whatever. It is not fair. The game is not being played fair.

Chairman Tollner

You think that is Planning or Zoning?

Alderman Dion

Zoning.

Chairman Tollner

Thank you Alderman Dion.

Alderman Richardson

I would like to ask the endorser a couple of questions. If I go to paragraph H it says the applicant may withdraw his application at any time and re-file subject to a re-filing fee by the board under its rules. Now what does anytime mean? Does that mean that you are getting to the end of the meeting, the Zoning Board members are now deliberating, the vote on it is eminent, and then the applicant or his representative can stand up and say we are withdrawing? Can he do that right at that time?

Alderman Teeboom

I believe that can be done today. I have never seen it happen. I think you can withdraw anytime.

Alderman Richardson

So they can gauge which way it is going to go and then just pull the plug on it?

Alderman Teeboom

I have not seen it happen, but there is nothing in the ZBA rules that says they cannot.

Chairman Tollner

I have never seen it happen either.

Alderman Teeboom

Well the ZBA rules leave a lot to be desired. You talk about re-writing our Ethics Review Committee – all of these bylaws need re-writing. In theory, they could pull out and say we withdraw before the final decision is made. As long as there is no vote taken and the final decision is made, they can pull and come back, but they have to go through a filing fee process that will cost them money.

Alderman Richardson

I have a question on the information you have given us about the Fox v. Greenland. I wanted to understand this point that the attorney is trying to make to Mr. Duffy. In this case, without having read through it, and obviously you have read through it, this case is where – correct me if I am wrong – It was several meetings...

Alderman Teeboom

Five meetings and the 5th member missed 2 of the meetings.

Alderman Richardson

So he is in for one, out, in again, out.....

Alderman Teeboom

He is in first 2, out the second 2 and came in the last. In fact, the comment was made when someone objected to him not being there they said we have him by telephonic communication. When he came back the 5th meeting he voted on one side, he voted 2/3. The losing side objected and took it to court. One court said he should not have voted, and the upper court said he could vote because the other side should have objected to him voting. The Supreme Court said – they went against the trial court/remanded. They said he could be allowed to vote because if they had objections they should have objected during the hearing, and they didn't so they lost their place. It was a technicality. In fact, most neighborhoods wouldn't know about that technicality.

The point of it is that having 5 members you now have to have the same 5 members. That was the point of the court case. This is problematical.

Alderman Richardson

A lot of these cases don't they have multiple meetings and it is tabled for a while?

Chairman Tollner

They could.

Alderman Richardson

Isn't that what happens often? How did this case start off? Did it start off with 5?

Alderman Teeboom

Yes. The applicant wanted 5.

Chairman Tollner

In the case here, they started to study a case and there were 5 members on the zoning board and they said we will hold this until our next meeting and look for more information. At the next meeting there were only 3 then they would hold that until those same 5 members.

Alderman Teeboom

No they can't. Once the hearing goes it goes. As I understand it, and the process is unclear to me, they consist of 5 – now if the hearing continues ...

Chairman Tollner

Those members have to be present. They have bunny hopped – let's just say they had 2 meetings planned in a month, and say they didn't come to a conclusion they are waiting for more information, they can make a motion and say we will take this up at our April 15th meeting knowing that there is still a meeting in between – it is all because of the amount of time to get the information, the members to be present – they are looking for a level of consistency for the situation.

Alderman Richardson

This same situation would not arise if the initial meeting started off with 3 and then a 4th and 5th would come along and maybe drop out – since it started with 3 and it was palatable to the applicant with 3 starting off at the first meeting so then there wouldn't be a case for complaint right?

Alderman Teeboom

Well if there is bunny hopping even on the 3 I guess the way I read this court case they could ask for the same three to be still there. This court doesn't go through a flowchart of all possibilities. Their point was there were 5 guys asked for, there were 5 guys at the first and second meetings, 4 on the third, 4 on the fourth, and 5 at the fifth.

Alderman Williams

Can we get back to the legislation?

Alderman MacLaughlin

Thank you Mr. Chairman. What I would like to do, because we could go for hours, days, weeks, maybe even a month on all the different mathematical ifs and compositions here, but that is not going to get us back to the intent of the legislation in front of us. What I am wondering is if we could just re-state and bring this back to what is the essence of this legislation in terms of making it back towards state RSA if that is the intent. I think that is really where we are at, and you are either at this point pretty much for doing that or opposed to doing that. I think we can finally put this question to rest.

Alderman Williams

I think that Alderman MacLaughlin captured exactly what I wanted to say. I wanted to say that it has been good discussing all of the handouts, but I want to get back to the legislation, and work on the merits of that and move forward.

Alderman Teeboom

That is the crux. There are other changes in here about how many members. It also deals with the Planning Board quorum, which is straightforward. That option of cherry picking only applies to the ZBA. Three are required on the ZBA only. I gave you the law for the ZBA. The ZBA appeals special rule. It only applies to the ZBA. It doesn't apply to the Planning Board. You can look to the rest of the stuff, but the very essence is the point of not following, in my opinion, the law, and have come up with a structure they have passed by for many years. There are people starting to believe it is the RSA. The first reaction I got from Mr. Duffy when I asked him was it is the RSA – like it is fact – stated loud enough and clear enough and often enough and everybody starts to believe it. Even our own attorney didn't quite believe it until he researched it. He thought there had been some court cases on it that overturned and changed the state law. There were.

Chairman Tollner

I think his comments were that if an applicant agrees to – correct me, but I believe this was another one of the questions that ended up not being the case – if an applicant gets a case heard by 3 members if the case goes against him if he accepted the 3 he wasn't going to be able to appeal it.

Alderman Teeboom

He would have to re-file.

Chairman Tollner

The gist of this is right now I think the concern from the group is if there are 3 sitting members the applicant right now under the ZBA rules if it is 3 the applicant can say I will wait until I have 4 or 5. Then the neighborhood is left in the lurch. What this legislation does, if there are 3, the applicant has 2 choices - either have his/her case heard that night or withdraw their application and re-file it. I think Alderman Richardson had a question earlier – he/she can literally re-filed it the very next day if they so choose.

I have 4 or 5. Then the neighborhood is left in the lurch. What this legislation does, if there are 3, the applicant has 2 choices - either have his/her case heard that night or withdraw their application and re-file it. I think Alderman Richardson had a question earlier – he/she can literally re-filed it the very next day if they so choose.

Alderman Williams

To Alderman Teeboom's point, there are no RSAs governing Planning Board just Zoning Boards. This kind of blankets both land use boards. I have a note that we put on this the last time that we held this and my note to myself said we are going to hold in committee to find out if the applicant is entitled to a full board to be heard – does he the applicant waive the right to appeal by moving forward with

less than a full board.

Chairman Tollner

The answer to that we found out was no.

Alderman Williams

They do not waive the right to appeal?

Chairman Tollner

Yes they do.

Alderman Williams

I just wanted to clarify. My next question is this piece of legislation will ...

Chairman Tollner

Can you repeat the question?

Alderman Williams

My question was does the applicant waive the right to appeal by moving forward with less than a full compliment.

Alderman Teeboom

No he gets a hearing ...

Chairman Tollner

The answer to that is if he goes with 3...

Alderman Dion

He cannot appeal...

Chairman Tollner

... He can't require 5. My understanding is if he goes with 3 ...

Alderman Teeboom

That is the case.

Chairman Tollner

... that is the case.

Alderman Williams

That satisfied my notes.

Alderman Teeboom

He can always appeal. He has to go to court to appeal.

Alderman Williams

Because this now covers the Planning Board as well....

Alderman Teeboom

The Planning Board is a whole different ...

Alderman Williams

Well it is part of this.

Alderman Teeboom

The Planning Board goes strictly according to the law. The Zoning Board goes strictly by the law. What I am trying to get – I am saying in this that the Zoning Board cannot make special rules – we forbid them from making a special rule. The Planning Board does not make up special rules.

Alderman Williams

I think we beat that one dead. We understand now that Zoning shouldn't have the bylaws that if this gets its teeth in and they have to go with 3 – what happens to the Planning Board now that is different than today with this piece of legislation?

Alderman Teeboom

The changes are underlined. What I am stating here is not currently in our code. You have to go back to state law to find it. I am basically updating our code to reflect state law in this case. A quorum of the Planning Board consists of five (5) members, unless the membership, accounting for members and alternate members, falls below nine (9) members in which case a quorum consists of a majority of the membership remaining. A quorum shall be necessary to convene a meeting in order to transact any business. All decisions made by the Planning Board, whether negative or affirmative, shall require a majority of members present and voting. The Chairman shall designate an alternate in event of an absence or a vacancy or a disqualification of a member, except that an alternate aldermanic member can only serve in the absence of the aldermanic member.

Alderman Williams

I had a quick question – I appreciate you reading through that, but I don't think my question has been answered. My question is what is different. I understand this is new language, but what is different

from the current practice? Does the Planning Board meet now with less than 5 members or no? Is this just a clarification?

Alderman Teeboom

As far as I know the Planning Board never meets below a quorum.

Alderman Williams

So this is just a clarification of what a quorum is for the planning board?

Alderman Teeboom

Well this could be clarification – if you fall below 9 it is not clearly defined – what if you have only 7 members of the board – a quorum then is 4.

Alderman Williams

So the purpose of this language is to clarify a quorum.

Alderman Teeboom

Clarify the procedures – right now there is no quorum...

Alderman Williams

That is what you are doing you are clarifying a quorum. That is the purpose. Okay.

Alderman Teeboom

Well the whole thing is about quorum.

Alderman Williams

But as far as it applies to Planning that all I want to know.

Alderman Teeboom

It is all about quorum. This whole ordinance is about quorum.

Alderman Williams

Okay.

Alderman Teeboom

It is not membership. Membership is covered in the ...

Alderman Williams

I am ready to move to the vote.

Alderman Richardson

I have one technicality I would like to talk about. It is actually two different places the same technicality. In Paragraph D – quorum shall be necessary to convene a meeting in order to transact business. All decisions made by the Planning Board whether negative or affirmative shall require a majority of the members present voting. It says the Chairman shall designate an alternate in the event of an absence, vacancy, etc. That struck me as being a little awkward that it doesn't say what – it says he is designating an alternate.....

Alderman Teeboom

That is a clarification too.

Alderman Richardson

... there are alternates present but not voting. It says here the Chairman shall designate an alternate. Shouldn't it say what he is designating an alternate for?

Alderman Teeboom

To vote.

Alderman Richardson

To vote – but it doesn't say that. That is the technicality.

Chairman Tollner

I don't think he has to because what he is doing is designating him as a voting member that night.

Alderman Richardson

It doesn't say that. It says Chairman shall designate an alternate in the event. It doesn't say to vote.

Chairman Tollner

What else would he need him for?

Alderman Richardson

Let's just add the language in. Let's just add it in.

Chairman Tollner

What would he be needed for?

**MOTION BY ALDERMAN RICHARDSON TO AMEND BY INSERTING AFTER THE WORD
“ALTERNATE” THE WORDS “TO VOTE”**

ON THE QUESTION

Alderman MacLaughlin

I think that in this case, it is pretty reasonable to understand that the purpose of an alternate is there and called upon to act, and therefore in acting to vote. I don't think the language addition is necessary so I oppose the amendment.

Chairman Tollner

I don't think that amendment is necessary either. You are not asking he or she to vote you are asking them to hear the case – the question is to sit on the case and vote.....

Alderman Richardson

Correct that is exactly...

Chairman Tollner

We can vote on the amendment.

Alderman Williams

Just hear the case and vote might be the amendment.

**AMENDED MOTION BY ALDERMAN RICHARDSON TO AMEND BY INSERTING THE WORDS
“TO HEAR THE CASE AND TO VOTE ON THE CASE” AFTER THE WORD “ALTERNATE” IN
SECTIONS D AND F**

ON THE QUESTION

Alderman Teeboom

If you are going to do that as an amendment do you want to vote – you should also do it on the next page.

Alderman Richardson

Correct.

MOTION CARRIED

Chairman Tollner

All of those in favor of O-06-63 as amended say yea.

MOTION CARRIED

TABLED IN COMMITTEE

Resolutions

Ordinances

O-06-28

Endorsers: Alderman-at-Large Brian S. McCarthy
Alderman-at-Large David W. Deane

**CREATING A FACILITIES DIVISION AND PROVIDING FOR A PROCESS FOR
THE EVALUATION AND PERMANENT ESTABLISHMENT OF SAID DIVISION**

O-06-73

Endorsers: Alderman-at-Large David W. Deane
Alderman Daniel L. Richardson
Alderman Mark S. Cookson

**REGARDING THE RECONSIDERATION PERIOD FOR FINANCE COMMITTEE
CONTRACT APPROVAL**

PUBLIC COMMENT - None

DISCUSSION

Alderman Deane made the suggestion that the Chairman read through page 438 of Masons Manual wherein procedures in committees are discussed. Specifically he cited “debate is an essential feature of the democratic government, and as such requires clarity and honesty on the part of each speaker and attentiveness on the part of all members. While it is always proper to question or condemn the nature of consequences of a proposed measure, it is never proper to question the motives or good faith of that measure’s proponents or opponents.” He stated that was done by the Chairman of the committee. He requested that in the future the Chairman think sooner before acting.

Chairman Tollner remarked that he did not do that, but asked to move the meeting along when

comments were repeated.

Alderman Teeboom expressed his appreciation of the Chairman, and his feelings that he is doing a very good job.

Alderman Dion stated his appreciation of the Chairman.

ADJOURNMENT

**MOTION BY ALDERMAN DION TO ADJOURN
MOTION CARRIED**

The meeting was declared closed at 10:40 p.m.

Alderman David MacLaughlin
Committee Clerk

March 2, 2007

Susan K. Lovering
Aldermanic Legislative Manager
Board of Aldermen
City of Nashua
229 Main Street, PO Box 2019
Nashua, NH 03061-2019

Dear Ms. Lovering:

Thank you for your letter regarding my nomination by the Mayor to the Ethics Review Committee.

Unfortunately, I have to decline consideration for this position. My duties and responsibilities as Executive Pastor of Zion Church Ministries, located in Everett and Framingham, MA, along with my work at Rivier College preclude my being able to make the commitment to this committee.

I feel very honored that the Mayor and the Committee have considered me as a candidate and regret that I cannot be of service to you and the City of Nashua.

Sincerely,


Dr. Regina Shearer

Executive Director of Academic Administration

February 23, 2007

RE: Vacant Planning Board Position

Mayor Bernard Streeter
229 Main St
Nashua, NH 03060

Dear Mayor Streeter,

Thank you for your support in my nomination as a candidate for the Nashua Planning Board. In the time ensuing from when my resume was submitted to the Board of Aldermen and my receipt of a confirmed meeting, an opportunity to relocate has arisen. Unfortunately, my relocation to a neighboring community disqualifies my status as a candidate for the Nashua Planning Board. I hope upon my return to the #1 City, in the future, that I will again be honored as a candidate to serve on the Planning Board.

Sincerely,

Megan M. Prieto

Megan M. Prieto

REC'D MAY 26 2007

MEGAN PRIETO
41 RAYMOND ST
NASHUA, NH 03064

Board of Aldermen

City of Nashua

229 Main Street / P O Box 2019

Nashua, NH 03061-2019

(603) 589-3030 • FAX: (603) 589-3039



Memorandum

TO: Personnel/Administrative Affairs Committee
FROM: Mark S. Cookson, Alderman - Ward 1
DATE: Wednesday, March 8, 2007
SUBJ: **Support for Mayoral and Board of Aldermen President Appointments**

Chairman Tollner and distinguished members of the Personnel/Administrative Affairs Committee:

It is with great pleasure that I am writing you today to share with you my support for the following two appointments which you will be interviewing at this evening's Personnel/Administrative Affairs Committee:

Cynthia Overby, Planning Board Appointment
and
Claire B. McHugh, Zoning Board Appointment

I have had the opportunity to interact with both Cynthia Overby and Claire B. McHugh over the past year in my capacity as Ward 1 Alderman. Both are very active in the community and I have no doubt will provide the leadership, critical thinking and fulfill the duties required by each of the Boards with uncompromising integrity.

Regards,

Mark S. Cookson

Alderman – Ward 1

Richardson

From: "Richardson" <jandane@aspi.net>
To: "Alderman-at-Large Jim Tollner" <Jim_Tollner@hphc.org>; "Alderman Ward 6 Robert Dion" <dionr@ci.nashua.nh.us>; "Alderman Ward 8 David MacLaughlin" <MacLaughlinD@ci.nashua.nh.us>; "Alderman Ward 9 Greg Williams" <gwilliams@scrivanos.com>
Sent: Saturday, October 28, 2006 5:36 PM
Subject: More Information Related to O-06-49 "DELETING UNENFORCABLE NON-PUBLIC MEETING PROVISIONS AND URGE BOARDS TO INVITE MAYOR AND ALDERMEN TO PARTICIPATE"
Members of the Personnel & Administrative Affairs Committee -

I have stumbled upon more information related to O-06-49. See communication below.

Sincerely,

Daniel Richardson
Alderman Ward 3

-----Original Message-----

From: ConnellD@ci.nashua.nh.us
To: ddeane05@aol.com
Cc: bennetts@ci.nashua.nh.us; StreeterB@ci.nashua.nh.us
Sent: Mon, 14 Aug 2006 1:55 PM
Subject: RE: O-04-28

We're not aware of any occasion when it's come up.

-----Original Message-----

From: ddeane05@aol.com [mailto:ddeane05@aol.com]
Sent: Monday, August 14, 2006 7:20 AM
To: Connell, David
Cc: Bennett, Stephen; Streeter, Bernie
Subject: O-04-28

Attorney Connell

In reviewing O-04-28 under section 2-5 C. there is a sentence that states "In the absence of a specific vote to the contrary". I am requesting examples of specific motions and votes to the contrary and how they are recorded. Thank You.

Alderman David Deane

12/16/2006

Richardson

From: "dennis nogan" <dchnogan@yahoo.com>
To: "Richardson" <jandane@aspi.net>
Sent: Wednesday, September 06, 2006 8:56
Subject: Non public Mettings
Dan,

Attorney Collosion is of the option that Nashua Ordinance Section 2-5 does not and can not apply to the BOE. He reasons that the BOE is governed by certain state statues including RSA 194-C:4(II) which authorises the BOE to direct the "recruitment, supervision and evaluation of staff..." The court case regarding the superintendent's pay clarified that the scope of the BOE authority encompasses personnel decisions regarding the Superintendent. the Court held that the BOE authority in this area cannot be abrogated by the local ordinance. As such, as a matter of NH law it is the BOE (not Mayor or BOA) that has responsibility for any personnel actions regarding the Superintendent that may necessitate a non-public session. The BOE is government by a body of law seperate from that governing boards of fire or public works. This would apply to all non union eemployees and individual employees.

This would not apply to union or collective bargaining units however. In those cases it would be helpful to have a member of the BOA since they have final say in the matter.

Regarding my putting it on record that Dr. Earl could request we stay in public: we had already heard through attorneys that this was her perference.

Everyone on the board knows it is her choice. I just wanted to make it part of the record

Thanks for the mental exercise!

I must rush off to an appoint- hair cut.

Dennis

Richardson

From: "Connell, David" <ConnellD@ci.nashua.nh.us>
 To: "Richardson, Daniel" <RichardsonD@ci.nashua.nh.us>
 Cc: "Rootovich, David" <RootovichD@ci.nashua.nh.us>; "Deane, David"
 Sent: Thursday, September 14, 2006 6:07 PM
 Attach: Excerpt from BOA mtg of 062204.doc
 Subject: RE: Non-public Meetings

Ald. Richardson,

Attached is an excerpt from the minutes of the meeting where NRO 2-5 was passed. As you can see I expressed the opinion that 2-5(3) would not be binding on those boards and committees which are not under the control of the board of aldermen, if those boards choose to disregard the ordinance. The procedure in the ordinance is designed to have the boards make a conscious decision about whether to exclude the mayor or aldermen from access to a given nonpublic session or its minutes, but access very likely cannot be enforced if a board fails or chooses not to follow the procedure.

-----Original Message-----

From: Richardson [mailto:jandane@aspi.net]
 Sent: Saturday, September 09, 2006 9:28 AM
 To: Connell, David
 Cc: Alderman-at-Large David Rootovich; Alderman-at-Large David Deane
 Subject: Fw: Non-public Meetings

Attorney Connell -

Attorney Clossen representing the BOE believes NRO 2-5 (3) does not apply to BOE. My comment to Sandra was in reference to discussing Dr Earls employment, but his position is broader --- that the NRO does not apply at all.

What is your opinion?

Sincerely,

Daniel Richardson
 Alderman Ward 3

----- Original Message -----

From: Sandra Ziehm <mailto:sziehm@verizon.net>
 To: Richardson <mailto:jandane@aspi.net>
 Sent: Tuesday, September 05, 2006 10:18 PM
 Subject: Re: Non-public Meetings

Dan,
 Attorney Clossen disagrees with your opinion as cited below. Following is his reply to our query regarding your comments.

I am of the opinion that Nashua Ordinance Section 2-5 does not (and legally cannot) apply to

9/15/2006

David Connell

There are two issues associated with this. The first is a policy issue of the -- if you read the analysis and the memos that you received in your boxes last week, the balancing of the interest of Aldermen remaining informed versus the interest in non-public sessions being maybe a type by being limited to those so called essential to the discussion. Second issue arises towards the end of this ordinance in which the ordinance would say it establishes a presumption that all the other boards in the city agree that Aldermen can come to their non-public sessions unless they provide otherwise. I don't think you can really bind them to that. I think they make that decision themselves.

Alderman Tollner

Understanding that you are comfortable with the legislation the way it is written.

David Connell

Comfortable as long as everyone is comfortable with the proposition that maybe the Board of Public Works, Fire Commissioners, the Police, the School Board, the Library Trustees and the Board of Health don't literally have to make their non-public sessions open to Aldermen in each and every case they can decide because they are independent boards that run their own meetings.

Alderman Tollner

If this Board is comfortable with that then we should vote in favor of it.

David Connell

You are free to.

Alderman Tollner

Thank you.

MOTION CARRIED

Resolution O-04-28 declared duly adopted.

Alderman LaRose

I didn't quite understand R-04-96 did you send that to Planning & Economic or to Planning Board?

President McCarthy

The agreement with Southern New Hampshire Services?

Alderman LaRose

Right.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:33

674:33 Powers of Zoning Board of Adjustment. --

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize upon appeal in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

III. The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

V. Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

Source. 1983, 447:1. 1985, 103:20. 1987, 256:1, eff. July 17, 1987. 1998, 218:1, eff. Aug. 17, 1998.

ZBA Bylaws 6/13/06

- f) Others in favor of the variance/special exception shall be allowed to speak. Those speaking in favor have a maximum time limit of five (5) minutes each.
- g) Those in opposition to the variance/special exception shall be allowed to speak following those in favor. Those speaking in opposition have a maximum time limit of five (5) minutes each.
- h) A representative from the City Planning Staff shall give his/her recommendations relating to use variance requests.
- i) The applicant or his/her representative shall be allowed to speak once in rebuttal. The person speaking in rebuttal for the case has a maximum time limit of five (5) minutes.
- j) A representative of those in opposition shall then be allowed to speak once in rebuttal. The person speaking in rebuttal in opposition to the case has a maximum time limit of five (5) minutes.
- k) The Chairman in his/her discretion may limit the time of any speaker, either for or against the variance/special exception.
- l) Each speaker shall identify himself/herself for the record by stating his/her full name and address.
- m) Each member of the Board & the Zoning Administrator or his/her representative may ask questions at any point in the hearing to clarify information regarding the case.
- n) Any party to the hearing who desires to ask a question of another party to the hearing must be recognized by the Chairman to do so.
- o) If a quorum of three (3) members is not present, no cases will be heard. If only three (3) Board members are present, the applicant may request postponement to a time when a full Board of five (5) members are present. If only four (4) members are present, the applicant may request postponement to a time when the full Board of five (5) members is present if he/she resubmits new application fees.

9. VOTE AND NOTICE OF DECISION

The Board shall vote on each application for a variance, special exception, appeal of an administrative decision, or request for rehearing. The vote shall be taken in a public meeting held after the public hearing; or immediately after the case is closed by the Chairman; or at any other public meeting held in conformance with these by-laws. Notice of the decisions will be given to the Zoning Administrator for the public record. Discussion of applications in executive session may be conducted upon a majority vote of the Board, however, voting on the application must be made at a public meeting. Any decisions of the Board must be worded as to reason.



February 8, 2007

**ATTORNEY CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL**

Sean Duffy, Chair
Nashua Zoning Board of Adjustment

VIA E-Mail to pdgduffy@comcast.net

Re: Appointment of regular members

Dear Mr. Duffy,

This will follow up our telephone conversation regarding the appointment of members to the Zoning Board of Adjustment. In the City of Nashua, you have a board with 5 full members and 5 alternates authorized, but at present there are vacancies that have not been filled by new appointments. You have asked why the training materials produced by the Office of Energy and Planning and also the Local Government Center recommend that an applicant who appears before the Board be offered an opportunity to continue the matter until a board with 5 members is present to adjudicate the case when RSA 673:10, III indicates that a majority of the membership of a local land use board constitutes a quorum for the transaction of business. That is, why should an applicant not be compelled to proceed with the adjudication of a matter at any time that a quorum of the ZBA is present and available to hear the case?

There are public policy and practical components to this answer. Under RSA 674:33, III, the zoning board of adjustment is the only land use board where the concurring vote of 3 members is required to decide in favor of an applicant or to reverse the decision of a land use administrative official. This provision was enacted because the ZBA has very important powers. By granting a variance it effectively decides that some aspect of the zoning ordinance does not apply to a specific parcel of land either now or in the future. The ZBA acts as a constitutional safety valve to prevent the ordinance from acting to take property rights through inverse condemnation. The ZBA also has the power to overrule and reverse determinations made by the planning board or zoning administrative officials on questions involving the meaning and interpretation of the zoning ordinance. That is, it acts as an adjudicative body with powers similar to that of a court to reverse the decisions of executive branch officials.

There is a difference between the conduct of business by a ZBA and the process of adjudication. In the conduct of business, a quorum of the board may review and approve minutes, consult with other boards such as the planning board, deal with correspondence, and

make procedural decisions for the conduct of hearings and control of the board's agenda. When the board commences an adjudicative hearing, however, it has a direct impact upon the rights and liabilities of the parties involved in the matter, and a direct impact upon specific parcels of land in the city. The same differences apply to the work of judges in all of the courts of our state. I would refer you to the Court Rules, available at [http://www.nhscourts.gov](#), particularly Rule 12-D of the Supreme Court where a litigant may consent to a hearing involving less than the full complement of the 5 judges of the Supreme Court, and Rules 81-85 of the Superior Court where a litigant may consent to a hearing before a special master other than a Superior Court judge. Each of those describe processes designed to achieve a result more quickly than is otherwise possible. Both of the rules state that, other than in very limited circumstances, a litigant has a right to opt out of the process and have an adjudication of the case by either a Superior Court judge or a full complement of judges of the Supreme Court. The point is, the decision is up to the litigant.

As a matter of public policy, the ZBA's powers determine the usefulness of real property, and it can through its actions either add or remove substantial economic value from property. It is a buffer that serves to protect individual landowners from government activity that could take property rights through regulation as surely as if the property had been taken by eminent domain. The ZBA's authority to reverse decisions made by city land use officials serves as a buffer between citizens and the actions of public officials charged with the daily administration of the ordinance. The statutes authorizing creation of land use boards contemplate, although they do not expressly require, that a full complement of members will be appointed, because the ZBA is engaged in serious business in the municipality.

Therefore, as a practical matter, *everyone* who appears before a ZBA wants the full complement of Board members to hear the case, since having a mere quorum requires unanimity on any action that the Board takes. There is a risk for developers, there is a risk for abutters, and there is a risk for city officials if a mere quorum is deciding these important questions. In some cases meritorious requests may be denied, since by human nature it is difficult for any three persons to reach a unanimous decision on any particular issue. In other cases, requests that lack merit may be approved if three persons unite in a decision. It is not overstating the case to say that the fate of certain provisions of the zoning ordinance may effectively be placed in the hands of three unelected persons if the full complement of the ZBA is unavailable.

In today's world, another practical problem is presented when a board is not fully staffed. Many cases before the ZBA cannot be resolved in a single meeting due to the complexity of the project or the complexity of the issues presented. If there is only a mere quorum available, it is highly likely that some member will miss one or more meetings where a case is presented. I would refer you to the case of Fox v. Town of Greenland, 151 NH 600 (2004) as an example of this type of case that stretched over many months. The shifting attendance of board members created an appealable issue that was not resolved until it reached the Supreme Court.

For all of these reasons, both OEP and the LGC make these **recommendations**. **There will certainly be times for every board when a full complement of members is unavailable, but this should be the exception. Proceeding with a mere quorum does satisfy the minimum requirements of statute.** For an individual applicant, there is a significant risk of unfairness or error in that case because of the difficulty of persuading a board to reach a unanimous decision.

But there is a larger risk to the municipality in every case that proceeds in that manner, because every case carries the risk of incorrect results, additional litigation, and a general perception that the adjudicative process in the board may be unfair.

Sincerely,

Paul G. Sanderson, Esq.
Staff Attorney